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Dominion Election Rules
with Notes

by
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Dominion Election Rules

OF THE

High Court of Justice for Ontario.

With Notes and Forms by

GEORGE SMITH HOLMESTED

(one of His Majesty's Counsel for Ontario, and Senior Registrar of
the High Court of Justice)

BEING

A Manual of Practice

IN

Dominion Election Petitions

1909.

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Preface

The procedure in reference to Dominion Controverted Elections is to be gathered from the *Controverted Elections Act*, (R. S. C. c. 7), and the *Rules* of Court made in pursuance thereof.

An attempt has been made in the following pages to combine the provisions of both the Act and the *Rules*, so as to enable the practitioner more easily to see in a connected and consecutive form the practice to be pursued in such matters.



General Rules for the trial of CONTROVERTED ELECTIONS

OF MEMBERS OF THE HOUSE OF COMMONS,

Made by the Judges of the High Court of Justice for Ontario under and by virtue of
the "Dominion Controverted Elections Act."

(14th December, 1908.)

Prior to 1st November, 1873, contested elections to the House of Commons were dealt with by the House of Commons and committees appointed by the House; in that year this jurisdiction was first transferred by Parliament to the Courts of Law in the various Provinces of the Dominion. The first Statute having this effect was 36 Vict. c. 28 (D.), which came into force on the 1st November, 1873. This Act was repealed in the following Session by 37 Vict. c. 10 (D.), which re-enacted many of its provisions with various amendments. Under the last mentioned Act the Rules lately in force in the High Court of Justice were passed by the former Court of Queen's Bench, on 1st February, 1875, and those Rules, together with a few additional Rules passed by the High Court on December 19th, 1901, and December 17th, 1904, are now rescinded, and for them, are substituted those which follow.

These Rules are made by the Judges of the High Court, under power conferred by the *Controverted Elections Act*, (R.S.C. c. 7), which in regard to Rules of Court provides as follows:—

RULES OF COURT.

85.—(1) The Judges of the Court, or a majority of them, may, Judges of the Court to make rules. from time to time, make, revoke and alter general rules and orders, for the effectual execution of this Act and of the intention and object thereof, and the regulation of the practice and procedure and costs with respect to election petitions and the trial thereof, and the certifying and reporting thereon.

(2) Any general rules and orders made as aforesaid, and not Their effect. inconsistent with this Act, shall be deemed to be within the powers conferred by this Act, and shall, while unrevoked, be of the same

To be laid
before the
House of
Commons.

force as if they were herein enacted; and shall be laid before the House of Commons within three weeks after they are made, if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament. R.S., c. 9, s. 62.

Practice in
cases not pro-
vided for.

86. Until Rules of Court have been made by the Judges of the Court in any Province in pursuance of this Act, and so far as such Rules do not extend, the principles, practice and Rules on which election petitions touching the election of members of the House of Commons in England were, on the twenty-sixth day of May, one thousand eight hundred and seventy-four, dealt with, shall be observed so far as consistently with this Act they can be observed by the Court and the Judges thereof. R.S., c. 9, s. 63.

In matters, therefore, not provided for by *The Dominion Controverted Elections Act*, or these Rules, the practice and procedure prescribed by the *Ontario Judicature Act*, and the Rules made thereunder, shall apply. See *post* Rule 34. It is therefore only as to matters not covered by the *Dominion Controverted Elections Act*, the following Rules and the *Ontario Judicature Act* and Rules, that resort is to be had to the English practice and procedure in election petitions, as it existed on 26th May, 1874; as to that procedure: see *Lisgar*, 20 S.C.R. 1.

The common law of England relating to Parliamentary Elections is in force in Ontario, and applies to elections to the House of Commons: *Cornwall*, Hodg. 597.

The Dominion Act conferring jurisdiction to try election petitions on the former Court of Common Pleas, was held not to be *ultra vires*: *Niagara*, 29 C.P. 261; *South Ontario and West Hastings*, *ib.* 270; and *Montmorency*, 3 S.C.R. 1; and it was held in the latter case that by reason of the House of Commons having abandoned its former jurisdiction to try controverted elections, the Provincial Courts had acquired an inherent jurisdiction over such matters by virtue of their original jurisdiction over civil rights.

Recount.

The following Rules apply to proceedings upon petition either to compel a return; or after a return has been made to set aside the election, but before a return is made it is open to any person interested in the result to obtain a recount and scrutiny of votes.

For the mode of obtaining a scrutiny and recount see the *Dominion Elections Act*, R.S.C. c. 6, ss. 183-185, and 193-218.

Be it enacted by the Judges of the High Court of Justice for Ontario under the authority of the *Dominion Controverted Elections Act*, as follows:—

Interpretation
of Rules.

1.—(1) In these Rules—

(a) "County" shall include District.

- (b) "Court" shall mean the High Court of Justice for Ontario.
 - (c) "Judge" shall mean Judge of the High Court of Justice for Ontario.
 - (d) "Petition" shall mean an election petition.
 - (e) "Published" shall mean inserted in a regular issue of a public newspaper published in the Electoral District.
 - (f) "Registrar" shall mean the Senior Registrar of the High Court.
 - (g) "Sheriff" shall mean the Sheriff of the County or District in which the Electoral District to which a petition relates is situate.
 - (h) "Trial Judges" shall mean the Judges assigned for the trial of a petition.
- (2) *The Interpretation Act of Canada* shall apply to these Rules.

This is a new Rule

2. The references to sections are to sections of the "*Dominion Controverted Elections Act*."

This is a new Rule.

3. On the presentation of a petition, there shall be delivered at the office of the Registrar a copy thereof, to be sent to the Returning Officer under section 16. Copy of petition to be left with Registrar.

Former Rule 1 was to the same effect.

Section 16 of the Act here referred to is as follows:—

16.—(1) On presentation of the petition the clerk of the Court shall send a copy thereof by mail to the Returning Officer of the electoral district to which the petition relates, and such returning officer shall forthwith publish a notice thereof once in a newspaper published in the district, or, if there is no newspaper published in the district, then in a newspaper published in an adjoining district. Copy of petition to return-
ing officer.

Notice of
petition to be
published.

(2) Such notice may be in the following form:—

"Notice is hereby given that a petition has been presented under the *Dominion Controverted Elections Act* against the return of _____, Esquire, as member of the Parliament of Canada for the electoral district of _____, and (where the seat is claimed) claiming the seat for

"Dated at _____, the _____ day of _____, 19 ____.

"A. B.,

"Returning Officer."

54-55 V., c. 20, s. 7.

The omission to deliver a copy for the returning officer is fatal, and a petition may be dismissed for the default: *Burrard*, 31 S.C.R., 459.

In Provinces where no Election Rules have been passed, a copy of the election petition must also be left with the clerk of the Court to be forwarded to the returning officer, as this is required by the English Rules of Mich. Term, 1868: *Lisgar*, 20 S.C.R. 1.

The copy of the petition referred to in this Rule is to be forthwith forwarded by the registrar to the returning officer: Rule 7. The necessary postage for transmitting the copy must be left by the petitioner with the registrar.

The costs of the publication of the notice of the petition as required by section 16 *supra*, form part of the costs of the petition: Rule 32 (3); and are to be borne in the first instance by the petitioner.

Name of
returning
officer to be
furnished.

4. The petitioner shall upon request furnish to the Registrar the name and address of the Returning Officer.

This is a new Rule.

This requirement is for the purpose of enabling the registrar to transmit the copy of the petition to the returning officer as required by Rule 7. No time is limited for complying with the registrar's request, and no penalty is imposed in case of non-compliance. It is convenient that at the time when the petition is filed the petitioner or his solicitor should be prepared to give the name and address of the returning officer.

Petition.

5. The petition shall state—

- (a) The right of the petitioner to petition within section 5;
- (b) The holding and the result of the election; and
- (c) Briefly the facts and grounds relied on to support the prayer of the petition.

Former Rule 2 was to the same effect.

Who may petition.—The *Controverted Elections Act*, s. 5, which prescribes who may be petitioners in an election petition is as follows:—

5. A petition may be presented to the Court by any one or more of the following persons:—

(a) A person who had a right to vote at the election to which the petition relates; or, Election petitions.
By whom to be made.

(b) A candidate at such election. R.S., c. 9, s. 5.

Whether a person who has been guilty of corrupt practices at the election is a competent petitioner, is the subject of conflicting decisions: See *Preliminary Objections*, *post*, p. 18. An objection to the status of a petitioner may be raised by way of preliminary objection: R.S.C. c. 7, s. 7; and see *Preliminary Objections*, *post*, p. 19.

Parties to Petition.—Usually the successful candidate is alone the respondent; but two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but in such a case each of them is entitled to security in \$1,000, as if separate petitions were filed: see R.S.C. c. 7, s. 10, *infra* p. 8.

Where the petition complains of no return, the returning officer would appear to be the only necessary respondent; and where, though a return has been made, the conduct of the returning officer is complained of, he should be made a party respondent to the petition: *Lisgar*, 16 Man., 249; but he is not a respondent for whom any one else can be admitted as a respondent in his place under section 81 of the *Controverted Elections Act*: see R.S.C. c. 7, s. 9, *infra*.

Where no return has been made the Act provides,—

8. Whenever a petition under this Act, complaining of no return, is presented, such order may be made thereon by the Court as is deemed expedient for compelling a return to be made; or the Court may allow such petition to be tried in the manner herein provided with respect to ordinary election petitions. R.S., c. 9, s. 6. Petition complaining of no return.

9. Whenever any election petition complains of the conduct of any returning officer, such returning officer shall, for all the purposes of this Act, except the admission of respondents in his place, be deemed to be a respondent. R.S., c. 9, s. 7. When returning officer shall be respondent.

But where the returning officer refused to receive nominations and announced there could be no election because there were no proper voters' lists, and he made a special return to the Executive Government, which issued a new writ, it was held that the Court had no jurisdiction to entertain a petition by a candidate who claimed that he should have been returned under the first writ: *Nipissing*, 37 C.L.J. 355.

A petition claiming that the respondent was not duly nominated, and claiming the seat for another candidate, and also claiming that, if the respondent were duly elected, his election should be set aside for corrupt practices, was held to be properly framed within section 5: *West Durham*, 31 S.C.R. 314.

The agent of a candidate is not a proper party to a petition: see *South Orford*, Hodg. 238; notwithstanding s. 60 (*b*) *post*, p. 44; but though not a party he may be summarily called on in certain cases to show cause why he should not pay costs: see section 77, *post*, p. 58, and an order may be made against him so to do.

The Act further provides,—

Two or more
candidates
may be
respondents.

10. Two or more candidates may be made respondents to the same petition, and their cases may, for the sake of convenience, be tried at the same time; but, as regards the security to be given on behalf of the petitioner, and for all other purposes of this Act, such petition shall be deemed to be a separate petition against each respondent. R.S., c. 9, s. 8.

[See *Queen's*, 20 S.C.R. 26].

Provisions as
to acceptance
of office, etc.

90. An election petition may be presented, and the trial of an election petition under this Act shall be proceeded with, notwithstanding the acceptance by the respondent of an office of profit under the Crown, or the resignation of his seat, but the respondent may, notwithstanding anything in this or any other Act contained, accept office at any time after the election, subject to the provisions of the House of Commons Act. R.S., c. 9, s. 67.

Cross petition.

Where a cross petition is filed, the candidate for whom the seat is claimed is usually the only respondent, but if in such a petition the conduct of the returning officer is called in question, he should be also joined as a respondent as abovementioned.

Where a petition claimed that the person who had obtained the majority of votes at the election had not been properly nominated, it was held that such person was properly made a respondent: *West Durham*, 37 C.L.J. 396; 31 S.C.R. 314.

Form of
petition.

6.—(1) The petition (Form 1) shall be divided into paragraphs, each of which shall be confined, as nearly as may be, to a distinct subject, and the paragraphs shall be numbered consecutively.

[This and subsection (5) *infra* are to the like effect as former Rules 3 and 5; see Forms Nos. 1 and 2, *post*, p. 65.]

Evidence not
to be stated.

(2) Evidence shall not be stated in the petition, but the Court or a Judge may order such particulars as may be necessary to prevent surprise or unnecessary expense or to

ensure a fair and effectual trial in the same way as in ordinary proceedings in the Court, and upon such terms as to costs and otherwise as may be ordered.

[Former Rule 6 was to a similar effect, except that it was worded "Evidence need not be stated, etc."]

(3) The petition shall conclude with a prayer that some ^{Prayer.} named person be declared duly returned or elected, or that the election be declared void, or that a return be enforced (as the case may be), and shall be signed by all the petitioners.

[Former Rule 4 was to the same effect.]

(4) There shall be indorsed upon the petition and all copies ^{Indorsement.} thereof to be delivered or served the name of some person entitled to practise as a solicitor whom the petitioner authorizes to act as his agent or a statement that the petitioner acts for himself (as the case may be) and in either case an address within the City of Toronto at which notices and other documents requiring service may be left, and in default thereof all such notices and documents may be served by posting at the office of the registrar.

[This is new in that it requires the information in question to be indorsed on the petition and copies for service; former Rule 9 required a notice to be delivered signed by the petitioner.]

(5) No costs shall be allowed for drawing or for copies of ^{Costs.} a Petition not substantially in compliance with this Rule, unless otherwise ordered by the Court or a Judge.

See former Rule 3, and note to subsection 1, *supra*.

Form of Petition.—The statutory provision as to the form of the petition is as follows:—

11. The petition presented under this Act may be in any prescribed form; but, if or in so far as no form is prescribed it need not be in any particular form, but it must complain of the undue election or return of a member, or that no return has been made, or that a double return has been made, or of matter contained in any special return made, or of some such unlawful act as aforesaid by a candidate not returned, and it must be signed by the petitioner, or all the petitioners, if there are more than one. R.S., c. 7, s. 9.

Where a petition claims the seat, and the Judges at the trial decide that the candidate for whom the seat is claimed was duly elected, that decision, if unreversed on appeal, is final, and no petition can be subsequently presented against his return: *Waggood v. James*, L.R. 4 C.P. 361.

For this reason where the seat is claimed for another, and the respondent desires to contest the validity of the election of such other person, a cross petition must be filed.

The form given in the schedule to these Rules: see Rule 6 (1), *supra*, p. 8 is the prescribed form in Ontario, of an election petition. But the form is intended as a guide; there is nothing in the Rules making it compulsory, but omission to comply with it substantially may disentitle the petitioner to recover any costs for drawing the petition: see Rule 6 (5), *supra* p. 9.

Facts to be stated in Petition.—In addition to the matters referred to in section 11, *supra*, the petition must show the status of the petitioner, and that he is a person qualified under section 5, *supra* p. 7, to be a petitioner. It should also state the facts as to the holding of the election, and specify the electoral district, the names of the candidates, and the result of the election as officially declared; or, if so, showing that no return has been made. It should also show the facts on which the petitioner bases his claim to contest the election, *e.g.*, that corrupt practices have been committed, specifying them (a) by the respondent, or (b) by his agents, or persons on his behalf. Or if the petition complains of misconduct by the returning officer it should specify with reasonable certainty the nature of such misconduct.

Matters which constitute corrupt practices at common law may be alleged in the petition, and will not be struck out: *Lisgar*, 16 Man., 249; but allegations which are vague and uncertain may be struck out on the application of the respondent: *Ib.*

The omission of the residence and occupation of the petitioner is amendable: *Lisgar*, 20 S.C.R. 1, and see *Glengarry*, 20 S.C.R. 38.

After a petition is filed, it is irregular to make any alteration in it without the order of the Court or a Judge, and where an alteration was made without order, the petition was ordered to be restored to its original form: *Lincoln and Niagara*, 1 Ont. Elec. Rep. 428.

Signature of Petition.—The Rule provides that the petitioner or petitioners, if more than one, must sign the petition. This is also a statutory requirement: see R.S.C. c. 7, s. 11, *supra* p. 9. The omission of any necessary signature would be a proper subject for a preliminary objection; but where it was claimed by the respondent, that the petition, though signed, was not signed by

the petitioner, and that his name had been used *malâ fide*, that was held to be a matter of fact to be tried, and one which could not be disposed of summarily on a preliminary objection: *North Simcoe* Hodg. 617 *sed quare*; see *post*, p. 19.

Indorsement on Petition.—This is a substitute for former Rule 9, which required a petitioner to leave a notice with the registrar, giving the name of some person as his solicitor, or stating that he intended to act for himself, and giving an address in Toronto for service, and providing that in default proceedings might be posted up in the office of the clerk of the Court.

The following is the provision of the Act (R.S.C., c. 7), as to persons who may practise as solicitors in reference to election petitions.

89. Every person who, according to the law of the Province in which the petition is to be tried, is entitled to practise as an attorney-at-law or solicitor, before the superior courts of such Province, may practise as attorney, solicitor or agent, and any person who, according to such law, is entitled to practise as a barrister-at-law or advocate before such courts, may practise as counsel, in the case of such petition, and all matters relating thereto, before the court or trial Judges in such Province. R.S., c. 9, s. 66.

Who may
practise in
cases under
this Act.

Evidence not to be stated in Petition.—The provisions in Rule 6 (2), that evidence shall not be stated in the petition is imperative. The former Rule 6 read "Evidence need not be stated," and that Rule was held not to preclude a petitioner from stating evidence, but was merely designed to discourage the practice: *South Oxford*, Hodg. 238. Under the present Rule if evidence is stated, it would seem that it might be ordered to be struck out, on the respondent's application.

Time for filing Petition.—The time within which a petition and cross petition may be filed is limited by the *Controverted Elections Act*, s. 12, which is as follows:—

12. The petition must be presented not later than thirty days after the day fixed for the nomination, in case the candidate or candidates have been declared elected on that day, and in other cases forty days after the holding of the poll, unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other act of bribery by any member or on his account with his privity, since the time of the taking of the votes of such electors, in pursuance or in furtherance of such corrupt practice, in which case the petition may be presented at any time within thirty days after the date of such payment or act.

Cross petition. (2) In case any petition is presented at either time and on any ground, the sitting member whose election and return is petitioned against may, not later than fifteen days after service of such petition against his election and return, file a petition complaining of any unlawful and corrupt act by any candidate at the same election who was not returned, or by any agent of such candidate with his consent or privity: 54-55 V., c. 20, s. 5.

Where the last day falls on a holiday, the petition may be filed on the next juridical day thereafter: *Nicolet*, 2 S.C.R. 178, and see *Rae v. Gifford*, 38 C.L.J. 125, (B.C.).

The object of a cross petition is to disqualify the unsuccessful candidate from being again a candidate in the event of a new election being ordered, or to set up matters which would avoid the election of any other person for whom the seat is claimed.

Affidavit of Petitioner.—The *Controverted Elections Act* provides,—

Affidavit of
verification.

6. At the time of the presentation of the petition there shall also be presented therewith an affidavit by the petitioner that he has good reason to believe and verily does believe that the several allegations contained in the said petition are true; and, thereafter, should any elector be substituted for the petitioner, then, and in every such case, such elector, before being so substituted, shall make and file an affidavit to the same effect. 54-55 V., c. 20, s. 3.

Where there is more than one petitioner all of them should join in the affidavit.

The respondent is not entitled on the hearing of preliminary objections, to examine the petitioner on this affidavit as to the grounds of his belief. The petition need not be made an exhibit to the affidavit: *Lunenburg*, 27 S.C.R. 226; but see *Marquette*, *ib.* 219 and *infra*.

But where on cross-examination the petitioner admitted the affidavit to be false in material particulars, no objection being taken to the cross-examination, proceedings on the petition were stayed: *Re Marquette*, 11 Man. R., 381, and see *Re MacDonald*, 11 Man. R., 398.

Filing Petition. It is only upon petition being filed under the Act that the High Court of Justice can act in election matters: R.S.C., c. 7, s. 91; an application for a mandamus to a Judge of a County Court to proceed with a recount of votes under 41 V., c. 6, s. 14 (D.), now R.S.C. c. 6, s. 193, was refused: *Centre Wellington*, 44 U.C.Q.B. 132. Where no return has been made by the returning officer a petition may be filed to compel a return: R.S.C. c. 7, s. 8.

Presentation of a petition shall be made by delivering it at the office of the clerk of the Court, during office hours, or in any other prescribed manner. R.S.C. c. 7, s. 13. With whom
Petition to
be filed.

Petitions in Ontario can only be filed with the Senior Registrar of the High Court: R.S.C. c. 7, s. 2; Rules 1, 3, 7, 8. They cannot be filed in any local office: *Prescott*, 9 P.R. 481. Upon a petition being filed the Court, subject to the provisions of the Act, has the same powers and jurisdiction and authority in reference thereto as if the petition were an ordinary action: R.S.C. c. 7, s. 2 (2).

Although the Act provides that a petition must be filed during office hours, the rule as to office hours being held to be merely directory, a petition filed after office hours on the last day for filing petitions, was held to be filed in time: *Muir v. McNeill*, 27 C.L.J. 538. In that case, however, the difference between standard and solar time being taken into account, there was ground for contending that the office was prematurely closed, and that the filing took place before the office hours had actually expired, and in that case the officer received it as of the day it was filed.

A petition filed before the official declaration of the result of the election complained of was held to be premature: *Yukon*, 37 S.C.R. 495.

Security for costs.—The Act provides for the giving of security for costs by the petitioner at the time of filing his petition as follows:

14.—(1) At the time of the presentation of the petition, security for the payment of all costs, charges and expenses that may become payable by the petitioner shall be given on behalf of the petitioner,— Security for
costs.

- (a) To any person summoned as a witness on his behalf; or,
- (b) To the member whose election or return is complained of, who is hereinafter referred to as the respondent; or,
- (c) To the returning officer, if his conduct is complained of; or,
- (d) To the candidate not elected, whose conduct is complained of as aforesaid.

(2) The security shall be to the amount of one thousand dollars, and shall be given by a deposit of money with the clerk of the Court. Amount of
security.

(3) Such deposit shall not be valid unless it is made in gold coin which is legal tender under the statutes of Canada at the time when the deposit is made, or in Dominion notes, or in the bills of some chartered bank doing business in Canada. R.S., c. 9, s. 9; 54-55 V. c. 20, s. 6. Gold or
Dominion
notes.

15. The clerk of the Court shall give a receipt for such deposit, which shall be evidence of the sufficiency thereof. R.S., c. 9, s. 9. Receipt for
deposit.

Under the Act of 1873 where the petition was filed against the return of two members for the same constituency, it was held that it was only necessary to give the same security in amount as upon a petition against one: *Hamilton*, 10 C.L.J. (N.S.) 170; but where two candidates are now joined in the same petition, separate security of \$1,000 must be given to each: R.S.C. c. 7, s. 10.

Where a petition was filed against the return of two members and the petitioner deposited with the officers of the Court \$2,000, and in the notice of presentation of the petition he stated that he had given security in the amount of \$1,000 for each of the respondents, as required by Statute, but the receipt of the officer acknowledged the receipt of \$2,000, without stating that \$1,000 was deposited as security for each respondent; an objection to the sufficiency of the security was overruled: *Queen's*, 20 S.C.R. 26.

Payment of the deposit to the deputy prothonotary of the Court in Prince Edward Island was held valid: *Ib.*; and see *Shelburne*, 20 S.C.R. 169.

A receipt describing the deposit as "a bank note of \$1,000 (Dominion of Canada) bearing No. 2914," was held sufficient: *Argenteuil*, 20 S.C.R. 194.

The registrar is to pay the deposit into Court: see Rule 8. Where, before such a Rule had been made, the officer paid the money into Court, that was held not to affect the petitioner: *Russell*, 1 Ont. 439.

The omission to give the required security for costs would be fatal, and would entitle the respondent on a preliminary objection to the omission, to have the petition dismissed. Where, pending the petition, Parliament is dissolved before the trial, the petition drops, and the Court will order the deposit to be returned to the petitioner: *Carter v. Mills*, L.R. 9, C.P. 117; and also a deposit made by him as security for costs of an appeal: *Halton*, 19 S.C.R. 557. But where Parliament was dissolved after a decision dismissing the petition with costs, and after the Judge's report had been mailed to the Speaker, but before it reached his hands, it was held that the dissolution did not deprive the respondent of his right to tax his costs and recover them out of the deposit: *Marshall v. James*, L.R. 9 C.P. 702.

Where the petition dropped by reason of the dissolution of Parliament, pending an appeal to the Supreme Court, the petition was referred back to the Court in which the petition was filed to dispose of the question as to how the deposit should be applied: *Halton*, 19 S.C.R. 557; and that Court having refused to make an order, the Supreme Court of Canada subsequently made a declaratory order, that the petitioner was entitled both to the money deposited on filing the petition, and also to a sum deposited by him as security for costs of the appeal to the Supreme Court: *Cass. Dig.*, 270.

Service of Petition.—Sections 17-18 of the Act, which provide for the service of election petitions, are as follows:—

17. An election petition under this Act, and notice of the date of the presentation thereof, and a copy of the deposit receipt shall be served as nearly as possible in the manner in which a writ of summons is served in civil matters, or in such other manner as is prescribed. R.S., c. 9, s. 11. Service upon respondent.

18.—(1) Notice of the presentation of a petition under this Act, and of the security, accompanied with a copy of the petition, shall, within ten days after the day on which the petition has been presented, or within the prescribed time, or within such longer time as the Court, under special circumstances of difficulty in effecting service, allows, be served on the respondent or respondents at some place within Canada. Notice to respondents.

(2) If service cannot be effected on the respondent or respondents personally within the time granted by the Court, then service upon such other person, or in such manner, as the Court on the application of the petitioner directs, shall be deemed good and sufficient service upon the respondent or respondents. 54-55 V., c. 20, s. 8. If personal service is impossible.

Personal service of a writ of summons on a defendant is not required where a solicitor for a defendant accepts service and undertakes to appear: Ont. Jud. Rule 145. But it is doubtful whether service of an election petition on a solicitor who undertakes to appear, would be effective, and it is doubtful whether such an undertaking if given could be enforced; because this mode of service allowed by the Ont. Jud. Rules practically dispenses with service, whereas the Act contemplates that the petition shall be served "in the manner in which a writ of summons is served," which does not seem to include a provision for dispensing with service.

Ont. Jud. Rule 146 provides that service of a writ of summons shall be personal, but if it appears to the Court or a Judge on affidavit that the plaintiff is unable to effect prompt personal service, the Court or a Judge may order substituted or other service by advertisement or otherwise: see notes to that Rule; H. & L., pp. 280-285. Section 18, *supra*, also provides for substituted service in case prompt personal service cannot be effected.

Personal service anywhere in Canada may be effected without an order, although the place of service be out of the jurisdiction of the Court in which the petition is filed: *Queen's*, 20 S.C.R., 26; *Shelburne*, 20 S.C.R. 169; but it is held that if substituted service is ordered, it must be on some person in Canada: see *Shelburne*, 36 S.C.R., 537; and concluding words of section 18, *supra*.

In *West Peterborough* it was held* that an order allowing substitutional service and extending the time for service made after the lapse of ten days from the filing of the petition, was valid. It was argued in that case that an order to extend the time should be first made, and then a further effort made to effect personal service, before an order allowing substitutional service could be made, but these objections were overruled; and it was held that the order extending the time for service might properly authorize substitutional service, without requiring further efforts to be made to effect personal service. The order objected to was made before the present Rules were passed, and consequently before Rule 34, post, was in force. Under Rule 34 the provisions of *Ontario Judicature Act* Rules are made applicable to proceedings in controverted elections, but it would seem that the *Controverted Elections Act*, section 17, had so far as the service of the petition is concerned, practically made the Ontario Judicature Rule 146 applicable for the purpose of determining how an election petition may be served, inasmuch as that Rule prescribes how a writ of summons may be served. It had been previously held that an order for substitutional service could not be properly made until after the lapse of ten days from the filing of the petition: *Haldimand*, 1 Ont. Elec. Rep. 480, and see *Sunbury*, 37 C.L.J. 509, (N.B., 1901); *York*, 37 C.L.J. 430 (N.B., 1901).

Service on a grown up person at the domicile of the respondent in Canada within the ten days from the filing of the petition would appear to be a valid service, even though the papers do not come to his knowledge within the ten days: see *King's*, 19 S.C.R. 526; but service on the respondent's law partner, who was not a member of, or resident with, the respondent's family, was held, in the absence of any order authorizing service in that way, not to be good service of the petition; and a preliminary objection to the sufficiency of the service was upheld, and the petition was dismissed: *Montmagny*, 15 S.C.R. 1. A return of a bailiff that he had served the petition by leaving true copies "duly certified" with the respondent, was held to be sufficient: *Beauharnois*, 27 S.C.R. 232. Former Rule 15 provided that in case the respondent evaded service of the petition it might be served by posting up a copy in the registrar's office, but that mode of service was never adopted in practice, and the provision has not been continued in the present Rules.

Service out of the Province.—Personal service out of the Province at any place in Canada may be effected without an order: *Queen's*, 20 S.C.R. 26; but service out of Canada is invalid, even though made by order: *King's*, 36 S.C.R. 520. But where service has been improperly made out of Canada, that does not

*By Britton, J. (Dec. 1908.)

invalidate a subsequent service of the petition on the petitioner in Canada: *Shelburne*, 36 S.C.R. 537.

Extending time for Service.—The Court upon sufficient cause being shown, has power, on the application of any of the parties to a petition, to extend from time to time the period limited by the Act for taking any steps or proceedings by such party: R.S.C., c. 7, s. 87. The fact that a respondent was out of the Province was held to be a reasonable ground for extending the time for service of the petition: *Shelburne*, 14 S.C.R. 258; and see *McAllister v. Reid*, 35 N.B.R. 390; *McLeod v. Gibson*, 35 N.B.R. 376.

Where the petitioner by mistake neglected to serve a copy of the receipt for the deposit along with the copy of the petition, as required by section 17, *supra* p. 15, the time for service was extended: *Glengarry*, 20 S.C.R. 38; see also *West Peterborough and Haldimand*, *supra* p. 16.

7. The Registrar shall, upon the presentation of the petition, forthwith send a copy of it to the Returning Officer, pursuant to section 16. Registrar to send copy of petition to returning officer.

This provision formed part of former Rule 12. The postage must be paid by the petitioner. See note to Rule 3.

8. The Registrar shall, on receipt of the deposit made with him on the filing of a petition, forthwith pay the amount deposited into Court with the privity of the Accountant of the Supreme Court of Judicature for Ontario, to the credit of the matter of the petition, for which payment no fee shall be payable. Deposit to be paid into Court.

Former Rule 57 was to the same effect. See note to Rule 6, p. 13.

Petition, when at issue.—A petition is at issue in case no preliminary objections are filed, at the expiration of five days from the day of service of the petition, unless the time is extended, and whether an answer is filed or not. Where preliminary objections are filed the petition is at issue on the expiration of five days from the date of the order disallowing the preliminary objections, unless the time is extended, whether an answer is filed or not: see R.S.C., c. 7, s. 20.

Preliminary Objections by Respondent, after filing of Petition.—After a respondent has been served with the petition, if for any reason he is advised that the petition ought not to be entertained, either on the ground of the incompetency of the petitioner, or on

the ground of any necessary preliminary steps not having been taken by the petitioner, or if taken, not having been taken within the time prescribed by the Act or Rules, or on the ground that the facts alleged in the petition do not make out any case for the interference of the Court, he may have such questions determined in a summary manner by filing preliminary objections.

The provision of the *Controverted Elections Act* in reference to preliminary objections is as follows:—

Preliminary
objections to
petition.

How decided.

19. Within five days after the service of the petition and the accompanying notice, the respondent may present in writing any preliminary objections or grounds of insufficiency which he has to urge against the petition or the petitioner, or against any further proceeding thereon, and shall, in such case, at the same time, file a copy thereof for the petitioner, and the Court shall hear the parties upon such objections and grounds, and shall decide the same in a summary manner. R.S., c. 9, s. 12.

Preliminary
objections,
when dis-
allowed.

Preliminary
objections,
when dis-
allowed.

Preliminary objections delivered after the lapse of five days are not void, and the time for their delivery may be extended even after the lapse of five days, they are at most irregular: *Bothwell*, 19 C.L.J. 233; 9 P.R. 485. But where the delivery of the preliminary objections takes place after the five days limited, they may on the application of the petitioner be ordered to be struck out, and no appeal lies from such order: *West Assiniboia*, 27 S.C.R. 215. A preliminary objection to the jurisdiction of the Court was disallowed: see *Niagara*, 29 C.P. 261. A preliminary objection that the petitioner has been himself guilty of corrupt practices was disallowed: *South Huron*, 29 C.P. 301; *North Simcoe*, Hodg. 617; *Cornwall*, Hodg. 803. Such conduct was held not to disqualify a petitioner, even if proved, not even if he was a candidate: *Southampton Case*, 1 O'M. & H. 221-225. But recently a preliminary objection that the petitioner had been guilty of corrupt practices at the election in question, and was therefore incompetent to file the petition, was allowed: *Halifax*, 41 C.L.J. 490; and see *Cumberland*, 36 S.C.R. 542. Preliminary objections to the sufficiency of the statement in a petition regarding the alleged invalidity of certain votes in favour of the respondent, on the ground of the voters being aliens and others not properly qualified; and on the ground of the payment of the travelling expenses of voters; and on the ground of the incorrectness of the voters' lists, and the refusal of the returning officer to receive votes—were disallowed: *North Victoria*, Hodg. 584. Hiring teams for the conveyance of voters was subsequently declared by statute to be a corrupt practice: 37 V. c. 9, ss. 96, 98 (D.); (see now R.S.C. c. 6, s. 270); *Selkirk*, 4 S.C.R. 494.

Status of Petitioner.—Objections to the status of the petitioner may be raised by way of preliminary objection, and will not be entertained at the trial: *Prescott*, 20 S.C.R. 196. Where the petitioner's status is objected to by preliminary objection the onus of establishing his status is on the petitioner: *Bellechasse*, 20 S.C.R. 181; *Stanstead*, 20 S.C.R. 12, overruling *Megantic*, 8 S.C.R. 169; and for that purpose, the petitioner on the hearing of the preliminary objection should be prepared with evidence, and the original voters' list used at the election must be produced, and not a copy certified by the revising officer: *Richelieu*, 21 S.C.R. 168; but a copy certified by the Clerk of the Crown in Chancery, as that used at the election on which the petitioner's name appears as a person having a right to vote: see *Winnipeg*, 27 S.C.R. 201; and see *Two Mountains*, 31 S.C.R. 437; or a copy printed by the King's Printer: *Provencher*, 13 Man, 444, is sufficient.

But a preliminary objection that the petitioner was not duly qualified to vote; and one, that the petition was not signed by the petitioner, but that his name was used *malâ fide* by other persons, were held to be matters of fact to be tried, and such as could not be disposed of in a summary manner on a preliminary objection: *North Simcoe*, Hodg. 617. But it is doubtful if this case can be considered to be any longer authority. In a later case in the Supreme Court it was held that where the respondent presents a preliminary objection to the qualification of the petitioner he may go into evidence in support of such objection: see *Cumberland*, 36 S.C.R. 542; *Pictou*, 36 S.C.R. 447. In *Beauharnois*, 31 S.C.R. 447, in such a case an issue was directed and tried.

A preliminary objection against the petitioner's right to vote, on the ground that he was fraudulently placed on the assessment roll, was disallowed, the Court refusing to go behind the voters' list; and also a preliminary objection that the petition was filed in pursuance of a champertous bargain; it being held not to be champertous for the political association with which the petitioner was connected to agree to pay the costs of the proceedings: *North Simcoe*, *supra*.

An election was held in 1874, under the Dominion Act of 1873, at which the petitioner and the respondent were candidates, and at which the respondent was elected. His election was subsequently avoided on petition, for corrupt practices by agents without the respondent's knowledge or consent. At a new election, held under the Dominion Act of 1874, the petitioner and respondent were again candidates, and the respondent was elected; thereupon another petition was presented charging that the respondent was guilty of corrupt practices at this last election; that he was ineligible by reason of corrupt practices at the former election; that persons reported guilty of corrupt practices at the former election trial

had improperly voted at the last election, and claiming the seat for the petitioner. It was held, on preliminary objections: 1. That the two elections were one in law, although held under different statutes. 2. That the respondent was not disqualified by the corrupt practices proved against his agents at the first trial. 3. That the fact of persons having been reported by the Judge as guilty of corrupt practices at the former election, did not *ipso facto* disqualify them from voting at the second election. The report not being as to them an adjudication, because voters are not parties to the proceedings, but that evidence of corrupt practices by a voter for either candidate at a former election may be given, and upon proof thereof, his vote may be struck off: *Cornwall*, Hodg. 647; but see *Halifax*, 41 C.L.J. 490, *supra* p. 18.

Objection to qualification of petitioner disallowed.

A preliminary objection, that the petitioner, who was a candidate, had not a sufficient property qualification, was overruled; *North Victoria*, Hodg. 584. No property qualification is now requisite: R.S.C., c. 6, s. 69.

Costs of preliminary objections when petition granted.

Where the respondent, under a preliminary objection, sought to establish bribery against the petitioner personally, and the inquiry was not concluded, and the respondent subsequently consented to his election being avoided on the ground of bribery by agents without his knowledge or consent, he was ordered to pay the costs of the inquiry on the preliminary objection, as well as the general costs of the cause: *South Renfrew*, Hodg. 556.

Ignorance by petitioner of matters set forth in petition is no ground for a preliminary objection: *Pleau v. Ames*, 28 Que. S.C. 455.

Preliminary objection to sufficiency of deposit for costs.

Objections to Deposit.—On a preliminary objection to the sufficiency of the deposit, it appeared that the petition was filed in the Court of Chancery, that the petitioner tendered a Dominion note for \$1,000 to the Registrar of the Court, who refused to receive it, and directed it to be paid to the Accountant of the Court, which was accordingly done: (see former *Chy. Ord.* 618), it was held that the payment had been properly made, and the objection was overruled: *North York*, Hodg. 749.

As to preliminary objections to the deposit: see *Queen's*, 20 S.C.R. 26; *Shelburne*, *Ib.*, 169; *Argenteuil*, 20 S.C.R. 194; cited in note to Rule 6, *ante*, pp. 13-14.

Other Objections.—A preliminary objection to the validity of an order extending the time for service of the petition was overruled: *West Peterborough*;* *Glengarry*, 20 S.C.R. 38; as also an objection that owing to there being several persons of the same name residing at the petitioner's place of residence it was impossible to identify the petitioner, owing to the omission of a statement of his occupation: *Ib.*, and see *Shelburne*, 14 S.C.R. 258; but objec-

*Before Britton, J., Dec., 1908.

tions to the sufficiency of the service effected may be taken by way of preliminary objection, without being a waiver of the objection, although the Act provides that preliminary objections may be filed after service of the petition: *Shelburne*, 36 S.C.R. 537; *King's* *Ib.* 520; *Montmagny*, 15 S.C.R. 1.

Hearing of Preliminary Objections.—The Act provides that preliminary objections are to be disposed of in a summary way. No procedure is prescribed by the Act or Rules, for obtaining the judgment of the Court on such objections. Although every election petition is to be tried by two Judges: R.S.C. c. 7, s. 38; yet where not otherwise provided by the Act, any order, act, application or thing for the purpose of the Act may be made or done by, to, or before a single Judge: *Ib.* s. 62.

The hearing and disposition of preliminary objections is not expressly required to take place before two Judges, and it would seem that a single Judge is competent to hear and dispose of such objections.

The course pursued for hearing preliminary objections in a recent case was to obtain from a Judge an appointment to hear and dispose of such objections, which was served on the petitioner's solicitor, and upon the return of the appointment the objections were heard and disposed of in Court: *West Peterborough*, (Dec., 1908, before Britton, J.) The respondent is entitled to go into oral evidence in support of his objections: *Cumberland*, 36 S.C.R. 542. In *Beauharnois*, 31 S.C.R. 447 an issue was directed and tried.

As to appeals from orders allowing or disallowing preliminary Appeal objections, see *post*, p. 46.

Answer of Respondent.—Within five days after service of the petition where there are no preliminary objections, or within five days after the order disallowing preliminary objections, the respondent may file an answer to the petition, but, whether such answer is filed or not, after the expiration of the five days allowed for filing the answer, the petition is at issue, and thereafter upon the application of either party the Court may fix the time and place of trial: R.S.C. c. 7, s. 20.

Where a respondent's preliminary objections have been over-ruled he cannot insert the same objections in his answer; if he do, they will be struck out: *North Oxford*, 8. P.R. 526.

Particulars.—Where the respondent finds that the charges made in the petition are not sufficiently definite he may apply to a Judge for an order requiring the petitioner to deliver particulars thereof: Rule 6 (2). Such an application should be made on two clear days' notice of motion. This method of obtaining particulars, however, does not apply to the particulars provided for by Rule 13, *post*: see *Furness v. Beresford*, (1898) 1 Q.B. 495; *West Elgin*, *Hodg.* 223; *Munro v. Balfour*, (1893) 1 Q.B. 113.

Preliminary objections overruled cannot be reiterated in respondent's answer.

Particulars.

Where particulars are ordered to be delivered, evidence cannot afterwards be given of any charges not included in the particulars delivered; but the Judges at the trial may allow an amendment, and give time, if necessary, to the opposite party to meet the charge: *Stormont*, (Cahey's vote), *Hodg.* 21; *Welland*, *Hodg.* 47; and see *Hamilton* (P.), 1 Ont. Elec. Rep. 499; and if, without amendment, evidence is received it cannot be relied on in appeal: *South Ontario*, *Hodg.* 420; but where both parties go into evidence on charges not in the particulars, the objection to their omission from the particulars is waived: *Lincoln*, *Hodg.* 489; under particulars that persons whose votes were objected to were not owners, tenants or occupiers, evidence of insufficient assessment of such persons is inadmissible: *South Grenville*, *Hodg.* 174-5; *Ib.* 164-5; and see *North Simcoe*, *Hodg.* 617.

A petitioner will not be required to deliver particulars of matters of which he has no knowledge, and which can only be ascertained by an examination of the ballots: *West Elgin*, *Hodg.* 223. But particulars will be ordered of the names, places of abode, and occupations of persons whose votes are alleged to have been rejected, and also of corrupt practices charged by the petitioner against the respondent and his agents: *West Elgin*, *Hodg.* 223; *Beal v. Smith*, L.R. 4, C.P. 145.

Under particulars of a charge of giving spirituous liquors in a certain named tavern on polling day during polling hours, evidence of liquor being given during polling hours in other taverns would be inadmissible: *South Oxford*, *Hodg.* 243.

Time for Delivery of Particulars.—The order for delivering particulars should specify the time within which they are to be delivered, but particulars delivered after the specified time and not objected to, cannot be rejected or set aside at the trial. If it is intended to contend that such particulars are too late a motion should be made in Chambers to set them aside before the trial: *North Victoria*, *Hodg.* 252.

In *Dickson v. Murray*, 19 C.L.J. 211, the particulars were ordered to be delivered eight clear days before the trial; and in *Saylor v. Platt*, 23 C.L.J. 431, fourteen clear days before trial; and see 24 C.L.J. 33.

Amendment of Particulars.—The Court or a Judge has power to allow an amendment of the particulars: see *Stormont* and *Welland*, *supra*. The application is not, of course. An application to amend by adding charges of corrupt practices by the respondent personally, and by his agents, was supported by an affidavit of the petitioner's attorney, that persons were employed to collect information, and that the new particulars only came to his knowledge three days before the application; but it not being shown that the petitioner or the persons employed could

not have given the information sooner; nor that the additional charges were believed to be true, nor otherwise substantiated, the application was refused: *South Norfolk*, Hodg. 680.

9. Affidavits and documents may be entitled as in Form 3. Entitling proceedings.

This is similar to former Rule 31.

The form prescribed is permissive; and it will be noticed it differs from the form of entitling a notice of trial Form 20, and the form of notices of application to withdraw Form 24, and Form 25.

Appointment of Solicitor by Respondent.

10. Any person returned as a member may, at any time before or after presentation of a petition against his return, send by registered post to or deliver at the office of, the Registrar a writing signed by him or on his behalf, appointing a person entitled to practise as a solicitor, to act as his agent, or stating that he intends to act for himself, and in either case giving an address within the City of Toronto at which notices and other documents requiring service may be left. Respondent's solicitor—address for service.

This is similar to former Rule 10.

It enables a person who anticipates the filing of an election petition against his return to send a notice to the registrar of the appointment of a solicitor to act for him; but even supposing a respondent availed himself of the right here given him, of which there is at present no instance, it would be improper to serve the petition on the solicitor so nominated, because it would not be personal service, nor would it be a substituted service authorized by an order of Court, nor does the present or any other Rule appear to authorize a petition to be served on the person, if any, so nominated, unless an order for substitutional service on such person is first obtained.

The Rule also enables such notice to be filed, after the presentation of the petition, but even if sent after the filing of the petition, the same objection would lie to the service of the petition on the solicitor so nominated.

All that the Rule contemplates is the providing an address for service in Toronto, at which "notices and other documents" (not including a petition), requiring service may be left, and it would probably be found that only documents not requiring personal service can be so served.

The following Rule makes it clear that this Rule is not intended to apply to the service of petitions, because it gives the respondent

seven days from the service of the petition within which to file the notice, and it is only in default of his so doing so that "such documents and notices" may be served by posting up a copy in the registrar's office; and it is obvious "such notices and documents" referred to in Rule 11 cannot include the petition: see *King's*, 36 S.C.R. 520.

As to persons entitled to practise as solicitors in election petitions: see *ante*, p. 11.

Service where
no address
given.

11. In default of the writing mentioned in the next preceding section being received by the Registrar within one week after service of the petition such notices and documents may be served by posting at the office of the Registrar.

This is similar to the concluding words of former Rule 10.

It would appear from this Rule that the notice required by the preceding Rule is somewhat equivalent in effect to an appearance in an action.

It will be noticed that the respondent has seven days after service of the petition within which to file the notice mentioned in Rule 10, and it is not until that time has expired without the notice being filed that the provision for posting at the office takes effect.

Fee to be paid on Filing Petition.

Fee to be paid
to registrar.

12. There shall be paid to the Registrar for his own use, on the delivery to him of a petition, for all services to be performed by him in connection with the petition and the proceedings thereon, other than the proceedings upon an appeal, a fee of fifteen dollars.

This Rule is similar to former Rule 58 of February 3, 1906.

In addition to the fee mentioned in this Rule, Ontario law stamps for proceedings as in an action are also payable: Rule 32, *post*; also the postage necessary for transmitting the copy of the petition to the Returning Officer.

Notice to be given by Respondent where he disputes Election of Person for whom seat is claimed.

Notice by
respondent
who disputes
validity of elec-
tion of person
for whom seat
is claimed.

13.—(1) Where the respondent to a petition, complaining of an undue return and claiming the seat for some person intends to give evidence to prove that the election of such person was undue, pursuant to section 49, he shall, six days

before the day appointed for the trial, deliver to the Registrar and also at the address given by the petitioner, a list of the objections to the election upon which he intends to rely.

(2) The Registrar shall allow inspection by and shall furnish office copies of such list to all parties concerned.

(3) No evidence shall be given by a respondent in support of any objection to the election, not specified in the list, except by leave of the trial Judges and upon such terms as to amendment of the list, postponement, payment of costs, and otherwise as may be ordered.

This Rule is similar to former Rule 8.

No order is necessary for the delivery of the list of the votes objected to, as required by this Rule: *West Elgin*, Hodg. 223; and there is no jurisdiction to make any order for the delivery of the particulars of the votes objected to otherwise than as required by this Rule: *Furness v. Beresford*, (1898) 1 Q.B. 495; *Munro v. Balfour*, (1893) 1 Q.B. 113.

The 49th section of the Act is as follows:—

49. On the trial of a petition under this Act complaining of an undue return, and claiming the seat for any person, the respondent may give evidence to show that the election of such person was undue in the same manner as if he had presented a petition complaining of such election: R.S., c. 9, s. 42.

This section is held only to apply to cases where a respondent makes recriminatory charges against the petitioner, or other person for whom the seat is claimed; but it does not enable him where he has filed no cross petition, to contend that if he should be declared not entitled to the seat, the election should be declared void for irregularities: *Queen's* 7 S.C.R. 247.

14. Where a petitioner claims the seat for an unsuccessful candidate, alleging that he has a majority of lawful votes, the parties shall each six days before the day appointed for the trial, deliver to the Registrar and also at the address, if any, given by the other, a list of the votes intended to be objected to, and of the heads of objection to each vote, and the Registrar shall allow inspection by and shall furnish office copies of such list to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the trial

Notice of list
of votes
objected to
when seat is
claimed.

Judges, and upon such terms as to amendment of the list, postponement payment of costs and otherwise, as may be ordered.

This Rule is similar to former Rule 7.

No order is necessary for the delivery of the list of votes objected to as required by this Rule: *West Elgin*, Hodg. 223; and there is no jurisdiction to make any order for the delivery of particulars of the votes objected to otherwise than as is required by this Rule: *Furness v. Beresford* (1898) 1 Q.B. 495; *Munro v. Balfour* (1893) 1 Q.B. 113.

The provisions of this Rule are to a great extent superseded by the present statutory provisions for obtaining a recount.

Solicitors' and Agents' Book.

Solicitors' and
agents' book.

15. The Registrar shall keep a book, in which he shall enter the addresses and names of all agents appointed under these Rules, and which shall be open to inspection by any person during office hours, without payment of any fee.

This Rule is similar to former Rule 11.

List of Petitions at issue.

List of petitions
for trial.

16. The Registrar shall insert in the list of petitions prepared under section 36, the names of the agents of the petitioner and respondent, and the addresses to which notices may be sent and shall post up the list on a notice board appropriated to proceedings under the Act and headed the "*Dominion Controverted Elections Act.*"

This Rule is similar to former Rule 22.

For section 36 see *infra*, p. 31.

Discovery.

Production of Documents, and Examination of Parties for Discovery.—After a petition is at issue it is open to both the petitioner and respondent to take proceedings for discovery, by obtaining an order of course for production of documents, and by the examination of his opponent. Such proceedings are similarly conducted to the like proceedings in actions.

The provisions of the Act relating to discovery are as follows:—

PRELIMINARY EXAMINATION OF PARTIES.

21.—(1) Any party to an election petition, whether petitioner or respondent, may, at any time after such petition is at issue, before or pending the trial thereof, be examined by or before a Judge or an examiner, in the manner hereinafter directed, by a party adverse in point of interest touching any matter raised by such petition; and any party so examined may be further examined on his own behalf, in relation to any matter respecting which he has been examined in chief; but such explanatory examination shall be proceeded with immediately after the examination in chief, and not at any future period, except by leave of the Court.

When and how parties to petition may be examined.

(2) When one of several petitioners or respondents has been so examined, any other petitioner or respondent, united in interest, may be examined on his own behalf or on behalf of those united with him in interest, to the same extent as the party so examined.

If there are several petitioners or respondents.

R.S., c. 9, s. 14.

22. Whenever a petition has been filed claiming the seat for a candidate, such candidate, although not a party to the petition, may be orally examined as if he was a petitioner. R.S., c. 9, s. 15.

A defeated candidate may be examined.

23.—(1) Any party to be examined orally, under the provisions of this Act, shall be so examined by or before a Judge, a Judge of a County Court, a Master in Chancery, Clerk of the Crown, or special examiner of the Court in which such election petition is pending, or before any barrister-at-law named for the purpose by the Court.

How examination shall be conducted.

(2) Such examination shall take place in the presence of the parties, their counsel, agents or attorneys; and the party so examined orally shall be subject to cross-examination and re-examination; and such examination, cross-examination and re-examination shall be conducted as nearly as possible in the mode now in use in superior courts on a trial of an action or hearing of a cause, or, in the Province of Quebec, at the trial of a civil cause by a jury. R.S., c. 9, s. 16.

Idem.

24.—(1) The depositions taken upon any such oral examination as aforesaid, shall be taken down in writing by the examiner, not ordinarily by question and answer, but in the form of a narrative, and when completed shall be read over to the witness, and signed by him, in the presence of the parties, or of such of them as think fit to attend.

Form of the deposition.

(2) In case the witness refuses or is unable to sign the said depositions, then the examiner shall sign the same.

(3) Such examiner may upon every examination, state any special matter to the Court if he thinks fit.

signing.

any special matter.

Questions may
be put down.

(4) It shall be in the discretion of the examiner to put down any particular question or answer, if there appears to be any special reason for so doing; and any question which is objected to shall, at the request of either party, be noticed or referred to by the examiner in or upon the depositions; and he shall state his opinion thereon to the counsel, agents, attorneys or parties; and, if requested by either party, he shall refer to such statement on the face of the depositions. R.S., c. 9, s. 17.

Deposition to
be transmitted
to the court.

25. When the examination before the examiner is concluded, the original depositions authenticated by the signature of such examiner, shall be transmitted by him to the office of the Court to be there filed; and any party to the petition may have a copy thereof, or of any part or portion thereof, upon payment for the same in such manner as is prescribed by the Court in that behalf. R.S., c. 9, s. 18.

[The office of the registrar is the office of the Court referred to in this Section.]

Compelling
attendance of
parties or other
persons to be
examined.

26. The attendance of a party or other person for oral examination or cross-examination before the examiner, may be compelled by a writ of *subpoena ad testificandum* or *duces tecum*, in like manner as the attendance of such party or person, at the trial of the petition, may be compelled, and any party or person upon being served with such writ shall be bound to attend before the examiner; but such party or person shall be entitled to the like payment for attendance and expenses as if he had been subpoenaed to attend upon the trial. R.S., c. 9, s. 19.

[Where the petitioner declares that he is aware only by hearsay of the facts alleged in the petition, the respondent will not be allowed on a preliminary examination to examine persons from whom the petitioner derived his information: *Darlington v. Gallery*, 7 Que. P.R. 329.]

Persons in
custody.

27. The sheriff, gaoler or other officer, having the custody of any prisoner, shall take such prisoner for examination before the examiner, if so ordered by the Court. R.S., c. 9, s. 20.

Notice of
examination.

28. Forty-eight hours' notice of any such oral examination or cross-examination shall be given to the opposite party or parties. R.S., c. 9, s. 21.

Neglecting to
attend or
refusing to
answer to be
contempt.

29.—(1) Any party or person who refuses or neglects to attend at the time and place appointed for his examination or cross-examination, or who refuses to be sworn or to answer any lawful question put to him by the examiner, or by any person entitled so to do, or his counsel, agent, attorney or solicitor, may be punished as for a contempt of court.

(2) If any witness demurs or objects to any question put to him, the question so put, and the demurrer or objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the officer of the Court to be there filed; and the validity of such demurrer or objection shall be decided by the Court and the costs of and occasioned by such demurrer or objection shall be in the discretion of the Court. R.S., c. 9, s. 22.

[The registrar is the officer of the Court referred to in this Section.]

30. Any party may, at the trial or other proceeding, use in evidence any part of the examination of the opposite party; Provided that, in such case, the Court may look at the whole of the examination, and if it is of the opinion that any other part is so connected with the part to be so used that the last mentioned part ought not to be used without such other part, it may direct such other part to be put in evidence. 54-55 V., c. 20, s. 9.

The right to use an examination for discovery as evidence is based on the principle that it is an admission under oath by the person against whom it is used.

PRODUCTION OF DOCUMENTS.

31.—(1) Any party to an election petition, whether petitioner or respondent, may, at any time after such petition is at issue, before or pending the trial thereof, obtain a rule in the nature of a side bar rule, or order of the Court requiring the adverse party to produce within ten days after the service thereof, under oath, all documents in his custody or power relating to the matters in question, saving all just exceptions; and to deposit the said documents with the clerk of the Court; and upon such documents being produced, the party requiring such production, or his agent, attorney or solicitor, may inspect the same and take examined copies thereof.

(2) When any person upon whom a rule or order to produce has been served wishes to avail himself of any just exception, he shall, in his affidavit on production, assign a sufficient reason why he should not produce and deposit the same in manner aforesaid. R.S., c. 9, ss. 24 and 25.

32. Such rule or order may issue in vacation as well as in term, and may be obtained on the last as well as other days of term; and such rule or order shall be dated the day of the week, month and year on which the same was drawn up and need not specify any other time or date; and may be obtained by the party requiring the same, his agent, attorney or solicitor, from the clerk of the Court. R.S., c. 9, s. 25.

[The clerk of the Court referred to in this section is the senior registrar. The order is issued as of course.]

service of rule.

33. The rule or order for the production of documents shall not require personal service, and it shall be sufficient to serve the same upon the agent, attorney or solicitor of the party. R.S., c. 9, s. 26.

[Service may be effected by leaving a copy at the address for service, if any, in Toronto, and if none has been given then by posting up a copy in the registrar's office: see Rule 6 (4), and Rules 10, 11.]

Affidavit on production.

34. The affidavit on production to be made by the party who has been served with the rule or order for production may be in the form or to the effect of the schedule to this Act, varied as the facts require. R.S., c. 9, s. 27.

[See form of affidavit, *post*, p. 79.]

Penalty for disobedience.

35. Any party who neglects or refuses to obey a rule or order for the production of documents may be punished as for a contempt of court. R.S., c. 9, s. 28.

Production of Documents in hands of the Clerk of the Crown in Chancery.

Production of documents by the Clerk of the Crown in Chancery.

17.—(1) At any time after a petition is filed, either party by order of the Court or a Judge, may have production and inspection of all books, lists, commissions, ballots, certificates, statements, documents, papers and returns, relating to the election, returned to, or in possession of the Clerk of the Crown in Chancery, at such place and in such manner, and upon such terms as the Court or Judge shall direct.

(2) For the purpose of such production and inspection, and for the purposes of the trial of the petition, the Clerk of the Crown in Chancery shall deliver or transmit as and when directed by the order such books, lists, commissions, ballots, certificates, statements, documents, papers and returns in such manner and to such officer as by the order shall be directed.

(3) Such books, lists, commissions, ballots, certificates, statements, documents, papers and returns shall be returned to the custody of the Clerk of the Crown in Chancery after the trial, or after the purpose has been served for which their delivery or transmission was required.

This Rule is similar to former Rule 26.

Trial of Election Petitions.—Sections 36-40 of the Act relating to the trial of election petitions, are as follows:—

36.—(1) The clerk of the Court shall, as soon as possible, make out a list of all petitions presented under this Act, *and which are at issue*, placing them in the order in which they were presented, and shall keep at his office a copy of such list open to the inspection of any person making application. List of petitions at issue to be made.

(2) Such petitions as far as conveniently may be, shall be tried in the order in which they stand on such list; and, in the Province of Ontario, in the order in which they stand on the list of the several Divisions of the High Court of Justice. R.S., c. 9, s. 29; 54-55 V., c. 20, s. 10. Order of trial.

37. When, under this Act, *more petitions than one are presented* relating to the same election or return, *all such petitions shall*, in the election list, *be bracketed together*, and shall be dealt with, as far as may be, as one petition; but such petitions shall stand in the election list in the place where the last presented of them would have stood if it had been the only one presented as to such election or return, unless the Court otherwise orders. R.S., c. 9, s. 30. All petitions relating to same election to be bracketed together.

[These sections seem to contemplate that as soon as petitions are at issue or if there are two relating to the same election when both are at issue, they are to be placed on a list of petitions for trial. The order in which they are to be placed on the list is that of their presentation, but in case of there being two petitions then as to those petitions they are to be bracketed together and placed on the list where the last one would stand in order of presentation. The list referred to in section 36 is to state the names of the agents of the petitioners and respondents, and the addresses for service. See Rule 16, *supra*, p. 26.]

Notwithstanding section 37, it is open to the Judges if they see fit to try two petitions relating to the same election separately: [*Laudreuil*, 22 S.C.R. 1.]

38.—(1) Every election petition shall be tried by two Judges without a jury, and it shall be competent for the Judges on such trial to decide any question raised as to the admissibility of the evidence offered, or to receive such evidence under reserve and subject to adjudication at the final hearing. Trial of petition.

(2) The trial of an election petition shall take place in the electoral district, the election or return for which is in question; Provided that, if it appears to the Court that special circumstances exist, which make it desirable that the petition should be tried elsewhere than in such electoral district, the Court may appoint such other place for the trial as appears most convenient. Place of trial.

(3) Notice of the time and place at which an election petition will be tried shall be given in the prescribed manner, and not less than

than fourteen days before that on which the trial is to take place.

[See Rule 18, *infra*, p. 34.]

Adjournments.

(4) The trial Judges may adjourn the trial from time to time, and from one place to another in the same electoral district, as to them seems convenient, or, upon cause shown supported by affidavit, where special circumstances exist which in their opinion render it desirable so to do, from one place to another outside the electoral district, or from a place inside to a place outside the electoral district, or *vice versa*. R.S., c. 9, s. 31; 50-51 V., c. 7, s. 3; 54-55 V., c. 20, ss. 11 and 17; 3 Edw. VII., c. 12, s. 1.

[As to extending time for trial: see *infra*, p. 33.]

When trial shall be commenced.

39.—(1) The trial of every election petition shall be commenced within six months from the time when such petition has been presented, and shall be proceeded with from day to day until such trial is over; but if, at any time, it appears to the Court that the respondent's presence at the trial is necessary, such trial shall not be commenced during any session of Parliament, if the respondent is a member; and in the computation of any time or delay allowed for any step or proceeding in respect of any such trial, or for the commencement thereof as aforesaid, the time occupied by such session of Parliament shall not be included.

Substitute for petitioner in case of delay.

(2) If, at the expiration of three months after such petition has been presented, the day for trial has not been fixed, any elector may, on application, be substituted for the petitioner on such terms as the Court thinks just. R.S., c. 9, s. 32.

[It is only where the Court finds that the attendance of the respondent at the trial is necessary, that the time of the session of Parliament is to be excluded from the computation of the six months: *Glengarry*, 14 S.C.R. 453. If the sitting member does not object, the trial may be fixed to take place during the session of Parliament: *South Perth*, 12 C.L.T., Occ.N. 317; and see *Glengarry*, *supra*. As to substitution of another person as petitioner under subsection 2; see *Kingston*, 30 C.P. 389; *Colchester*, 38 N.S.R. 232.

Where a trial has been commenced within the statutory period, or within the period to which the time for commencing the trial has been enlarged, the trial may be adjourned to a day beyond the statutory or enlarged period to allow the petitioner to file another bill of particulars: *Joliette*, 15 S.C.R. 458.

See, as to orders adjourning the trial, Rule 19 *infra*, p. 35. Where an appeal to the Supreme Court was pending on a substantial question raised by way of preliminary objection, the Court refused to allow the trial of the petition to be proceeded with: see *McDougall v. Davin*, 2 N.W.T.R. 74.

If an elector is substituted as petitioner he must make affidavit verifying the petition: see *ante*, p. 12, s. 6].

40.—(1) The Court may, notwithstanding anything in the next Enlargement. preceding section, from time to time enlarge the time for the commencement of the trial, if, on an application for that purpose supported by affidavit, it appears to such Court that the requirements of justice render such enlargement necessary.

(2) No trial of an election petition shall be commenced or No trial during term. proceeded with during any term of the Court of which either of the trial Judges who are to try the same is a member, and at which such Judge is by law bound to sit. R.S., c. 9, s. 33.

Subsection 2 does not preclude a Judge from proceeding with an election trial during the sitting of a Divisional Court, though held by Judges of the Division of which he is a member: *West Middlesex*, 1 Ont. Elec. Rep. 465.

The time and place of trial is fixed by the Court on the applica- Appointing time and place of trial. tion of either party, or *sua sponte*. As the petition is liable to be dismissed for want of prosecution it is *prima facie* the duty of the petitioner to apply to fix the time and place of trial: see *Addington*, 39 U.C.Q.B. 131.

The trial must take place within six months from the presentation of the petition unless the time is extended, or the presence of the respondent at the trial is declared to be necessary, and such declaration must be formally made before the time limited for the trial to take place has expired, and cannot be made *nunc pro tunc* after the time has expired: *Algoma*, 1 Ont. Elec. Rep. 448.

The order appointing the time and place of trial was formerly required to be made in Court, and not by a Judge in Chambers: *Collins v. Price*, 5 C.P.D. 544; and see *South Grey*, Hodg. 52; but it need not have been made by two Judges, and a single Judge making the order need not have been sitting in open Court: *Haldimand*, 1 Ont. Elec. Rep. 480; but now such orders are to be made by the trial Judges: see Rule 18 *infra*, from which it would appear that the Judges to try the petition must be assigned before the time and place of trial can be fixed.

Extending Time for Trial.—An order extending the time for trial must be made during the six months, or any period to which the time has been extended: *Glengarry*, 14 S.C.R. 453; *Pontiac*, 20 S.C.R. 626; and if the time has not been so enlarged the Court has no jurisdiction to proceed with the trial, or to grant any extension of time: *Ib.*; *Bagot and Rouville*, 21 S.C.R. 28; 12 C.L.T. Occ. N. 295; sed *vide Algoma*, 1 Ont. Elec. Rep. 448. An order made before the six months has expired appointing a day for trial beyond the six months is in effect an order extending the time for trial: *Beauharnois*, 32 S.C.R. 111. An order extending the time for trial was held not to be appealable: *Beauharnois*, 31 S.C.R. 447; but where an order had been

Extending
time for trial.

made after the expiration of the six months, extending the time for trial, which was not appealed from, and the Judge at the trial overruled an objection that the trial had not been commenced within the time prescribed by the Act, his decision on that point was held to be appealable, and his decision was reversed on the ground that the order extending the time was a nullity, having been made after the expiration of the six months: *Glengarry*, 14 S.C.R. 453.

An order postponing the examination of the respondent for discovery until after the current session of Parliament is virtually an order postponing the trial, and the time during which the examination is postponed is not to be reckoned in the computation of the six months: *La Prairie*, 20 S.C.R. 185; and so is an order fixing the time of trial at a day beyond the time prescribed by the Act, provided it was made before the expiration of the prescribed period: *Halifax*, 37 S.C.R. 601.

Dismissal of Petition for want of Prosecution.—Where the period limited by s. 39, *supra*, or by any order enlarging the time has expired, without a day being fixed for the trial of the petition, the respondent may move to dismiss the petition for want of prosecution: *West Middlesex*, 10 P.R. 27. An order dismissing a petition for want of prosecution is not appealable: *Richelieu*, 32 S.C.R. 118; neither is an order refusing a motion to dismiss on the ground that the trial has not been commenced in time, if made otherwise than at the trial: *L'Assomption*, 14 S.C.R. 429.

Notice of Trial.

Notice of trial.

18.—(1) The time and place of trial of the petition shall be fixed by the trial Judges, and notice thereof (Form 2) shall be given in writing by the Registrar, by posting the same in a conspicuous place in his office and sending one copy by registered post to the address given by the petitioner, another in like manner to the address given by the respondent, and a copy by registered post to the Sheriff fifteen days before the day appointed for the trial.

Notice of trial
to be published.

(2) The notice shall forthwith be published by the Sheriff.

(3) The posting of the notice at the office of the Registrar shall be notice in the prescribed manner within the meaning of the Act.

This Rule is similar to former Rule 23. For form of notice of trial see *post* Form No. 20.

The sheriff referred to in the Rule is the sheriff of the electoral district to which the petition relates: see Rule 1 (g); but there

is power to order the trial to take place in another district: see s. 38 (2), *supra*, p. 31. In such a case it would seem that the sheriff of that county or district should be notified, but no provision is made therefor.

If either party have omitted to give an address for service in Toronto under Rules 6 (4), and 10, *supra*, it would seem sufficient to stick up a copy of the notice of trial for such party in the registrar's office: see Rules 6 (4), 11.

An objection to the sufficiency of the notice of trial will not be entertained on an appeal to the Supreme Court: *Pontiac*, 20 S.C.R. 626.

No appeal lies from an order fixing the place of trial: *Halifax*, 39 S.C.R. 401; but if it is improperly made it may be a nullity: see *Glengarry*, 14 S.C.R. 453.

Record.—A record consisting of a copy of all the proceedings is to be left with registrar for the use of the trial Judges: see *post*, Rule 25.

19. Where an order is made adjourning the trial under section 38, notice of the adjournment in such form as may be directed shall be sent to, and when received shall forthwith be published by, the Sheriff. Notice of adjournment of trial to be published.

See former Rule 27.

See section 38 *supra*, p. 31.

The order for adjournment referred to in this Rule is probably an order made after a day has been appointed for the trial, but before the trial has commenced, when the order is made at the trial, the sheriff will be in attendance, and notice to him will be unnecessary, but where the adjournment, though made at the trial, is to another electoral district, the intention of the Rule appears to be that the sheriff of such other district shall be notified of the adjournment. The Rule does not prescribe by whom the notice shall be sent to the sheriff, or to what sheriff it shall be sent; the order of adjournment should therefore specify by whom and to whom the notice is to be sent.

20. In the event of the trial Judges not having arrived on the day appointed for the trial, or on the day to which the trial is adjourned, the commencement of the trial shall, unless otherwise directed by them, stand adjourned to the next day, and so from day to day, until their arrival. Adjournment in case of non-arrival of Judges.

This Rule is similar to former Rule 28.

Trial to proceed *de die in diem*.

21.—(1) No formal adjournment of the trial shall be necessary, but unless otherwise ordered by the trial Judges, it shall be continued from day to day until it is concluded, and in the event of the Judges who begin the trial or either of them being disabled by illness or otherwise unless the trial is adjourned under the power conferred by subsection 2, it may be recommenced and concluded by any two Judges assigned for that purpose.

[See former Rule 29.]

Adjournment in case a Judge disabled.

(2) In the event of one only of the trial Judges being so disabled the other of them shall have the like power of adjourning the trial as is conferred on the trial Judges.

New. When the former Rules were passed trials might take place before a single Judge: 37 V. c. 10, s. 13 (D.)

Clerk of Election Court.

Clerk of Trial Court.

22. The trial Judges may appoint a person to perform the duties of Clerk of the Election Court to be held by them, who shall perform the duties incident to the office of Clerk of the Court and such other duties as shall be prescribed by the trial Judges.

See former Rule 32, which was somewhat similar.

Compelling Attendance of Witnesses.

Compelling attendance of witnesses.

23. The order of a Judge to compel the attendance of a witness may be according to Form 4.

Former Rule 34 was similar to this. See Form No. 22, *post*, p. 82.

The ordinary procedure of the High Court of Justice for compelling the attendance of witnesses is to be observed, viz.:—By the issue and service of subpoenas *ad testificandum*, or *duces tecum*, as the case may require, and payment of the ordinary witness fees payable in High Court Actions: See R.S.C., c. 7, s. 44. A commission to examine witnesses in a foreign country may be issued in like manner as in an action in the High Court: *Cornwall*, 8 P.R. 64.

[The order referred to in this Rule, is in the nature of a Bench warrant, to be issued only where the witness neglects to attend on subpoena, and as a preliminary to proceedings to commit him for contempt of Court under the following Rule.]

The Act also provides:—

45.—(1) If it is made to appear to the Court or the trial Judges that any witness intends to leave Canada and cannot attend the trial of an election petition, then on application to the Court on notice to the parties to the petition, the Court may grant an order for the examination of such witness at a time and place and before a person to be named in such order, and the witness may thereupon be examined touching the matter complained of in the petition, due notice of such time and place being given to the parties to the petition, who may, by their respective counsel, attend such examination, and examine and cross-examine such witness; and such examination shall be reduced to writing and signed by such witness, and when duly returned by the examiner, and purporting to be certified by the examiner, may be used by either party to the petition on the trial thereof.

Witnesses
intending to
leave Canada.

(2) On the trial of an election petition under this Act, the trial Judges may, by order under their hands, compel the attendance of any person as a witness who appears to them to have been concerned in the election to which the petition relates; and any person who refuses to obey such order is guilty of contempt of Court.

the Compelling
the attendance
of witnesses.

(4) Upon proof to the satisfaction of the trial Judges of the service of a subpoena upon any witness who fails to attend or to remain in attendance in accordance with the requirements of the subpoena, and that a sufficient sum for his fees as a witness has been duly paid or tendered to him, and that the presence of such witness is material to the ends of justice, the trial Judges may by their warrant, directed to any sheriff or officer of the Court, or constable, cause such witness to be apprehended, and forthwith brought before them or any other Judges who may thereafter preside at such trial, to give evidence.

Securing the
presence of
reluctant
witnesses.

(5) In order to secure his presence as a witness, such witness may be taken on such warrant before the trial Judges and detained in the custody of the person to whom the warrant is directed, or otherwise as the trial Judges may order, until his presence as such witness is required, or, in the discretion of the said trial Judges, he may be released on a recognizance with or without sureties conditioned for his appearance to give evidence.

R.S., c. 9, s. 38; 54-55 V. c. 20, s. 18; 3 E. 7, c. 12, s. 2.

24.—(1) An order for committal for contempt may be according to Form 5.

Order to
commit for
contempt.

Committal
for contempt.

(2) The order may be directed to the Sheriff or other person having the execution of process of the High Court, and to all constables and officers of the peace of the county or place where the person adjudged guilty of contempt may be found; and shall and may be executed by the persons to whom it is directed, or any or either of them.

This Rule is similar to former Rules 35, 36. See Form No. 23, *post*, p. 83.

Any petitioner or respondent disobeying an order for production of documents may be punished as for a contempt of Court: Section 35, *supra*, p. 30, and also any witness refusing to obey an order of the Court: See section 45 (2), *supra*. Publication of comments in a newspaper, with a view to influence the result of an election trial, is a contempt of Court, and may be punished by committal of the offender: *Lincoln*, 2 App. R. 353; but in cases tried by Judges alone the modern practice is to admonish the offender and order him to pay the costs of the motion to commit, and in some cases an apology may be required.

Record, for Trial.

Record for
Judges.

25.—(1) At the time appointed for the trial, the petitioner shall leave with the Registrar, for the use of the trial Judges, written or printed on one side of the paper only, a copy of the petition and of all the proceedings thereon which show the matters to be tried, including the particulars of objection on either side.

(2) The correctness of the copy, so far as the proceedings are filed with the Registrar, shall be certified by him.

(3) The trial Judges may allow amendment of the copy, or in default of it being delivered, may allow further time for its delivery, or may adjourn the trial, upon such terms, as to costs and otherwise, as they see fit.

This Rule is similar to former Rule 50.

Where the record sent to the Supreme Court on appeal on preliminary objections, was lost in retransmission to the Court below, that Court allowed a new one to be filed: *Two Mountains*, 32 S.C.R. 55.

Shorthand Writer.

The Act provides,—

48. The trial Judges may, in their discretion, employ a short-hand writer to take down the oral evidence given by witnesses at the trial of the petition; and the expense of employing such shorthand writer shall be costs in the case. R.S., c. 9, s. 41.

The shorthand writer's notes not extended by himself, but signed by him, cannot be objected to: *Megantic*, 9 S.C.R. 279; notes taken by a shorthand writer appointed by the Judge and duly sworn, need not be read over to witnesses when extended, even though the shorthand writer be not an official stenographer of the Court: *Pontiac*, 20 S.C.R. 626.

Powers of Judges at Trial.

The Act provides:—

42. On the trial of an election petition and in other proceedings under this Act, the trial Judges shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority as a Judge of a superior court for the Province in which such election was held, sitting in term, or presiding at the trial of an ordinary civil suit, and the Court held by them for such trial shall be a Court of record. R.S., c. 9, s. 35.

Evidence at Trial.—The Court may act on the admission of counsel: *Carleton* (O.), Hodg. 6; *Cornwall* (O.), Hodg. 203; *Prince Edward* (O.), Hodg. 85; *Dufferin* (O.), Hodg. 590; *Russell* (O.), Hodg. 199; but the admissions of an agent, after his agency is at an end, are inadmissible against the former principal: *West Peterborough* (O.), Hodg. 274. An admission by respondent of bribery by an agent was acted on: *North Simcoe* (D.), Hodg. 624; *West Northumberland* (O.), Hodg. 562. In the latter case the Court declared that its functions were judicial and not inquisitorial, and that no further evidence should be received on the issue as to the avoidance of the election. But if it should incidentally appear upon the inquiry into the personal charges against the respondent that corrupt practices extensively prevailed, the same would be certified in the report to the Speaker. Evidence of corrupt acts by respondent in a former election was rejected: *Shelburne*, 37 S.C.R. 604. As to evidence of personal corruption of respondent, and allegations in petition: see *St. Anne*, 37 S.C.R. 563.

Where a charge is made against the attorney of respondent of endeavouring corruptly to obtain a withdrawal of the petition, he

may be ordered out of Court during the examination of the witnesses in support of the charge: *South Oxford* (O.), *Hodg.* 243.

Where the status of the petitioner was proved by the production of the voters' list by the proper officer, and evidence that the petitioners' names were duly entered thereon, but the list was not deposited in Court but retained by the officer, neither party desiring it to be filed, it was held the evidence was sufficient: *Megantic*, 9 S.C.R. 279.

The transcript of the shorthand writer's notes of evidence, though not in his handwriting, are valid if verified by his signature. *Ib.*

The Act provides:—

Inquiry as to corrupt practices.

43. Unless the trial Judges otherwise direct, any charge of corrupt practices may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practices. R.S., c. 9, s. 36.

Examination.

45.—(3) The trial Judges may examine and re-examine any witness so compelled to attend or any person present, although such witness or person is not called and examined by any party to the petition; and, after the examination of a witness as aforesaid by the trial Judges, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

Witnesses not to be excused from answering by any privilege.

46. No person shall be excused from answering any question put to him under this Act, touching or concerning any election, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, or that the answer to such question will tend to criminate such person; but no answer given by any person claiming to be excused on the ground of privilege, or that such answer will tend to criminate himself, shall be used in any criminal proceeding against any such person, other than an indictment for perjury, if the trial Judges give to the witness a certificate that he claimed the right to be excused on the grounds aforesaid, and made full and true answers to their satisfaction. R.S., c. 9, s. 39.

If the seat is claimed for person not returned.

49. On the trial of a petition under this Act complaining of an undue return and claiming the seat for any person, the respondent may give evidence to show that the election of such person was undue in the same manner as if he had presented a petition complaining of such election. R.S., c. 9, s. 42.

[Where the claim to the seat is abandoned at the trial, the recriminatory charges will not be gone into: *Joliette*, 15 S.C.R. 458.]

50. If, on the trial of an election petition, claiming the seat for any person, a candidate is proved to have been guilty, by himself or by any person on his behalf of bribery, treating, or undue influence with respect to any person who voted at such election, or if any person retained or employed for reward by or on behalf of such candidate, for all or any of the purposes of such election, as agent, clerk or messenger, or in any other employment, is proved on such trial to have voted at such election, there shall, on the trial of such election petition, be struck off from the number of votes appearing to have been given to such candidate, one vote for every person who voted at such election, and who is proved to have been so bribed, treated or unduly influenced, or so retained or employed for reward as aforesaid. 63-64 V., c. 12, s. 122

[See section 54, *infra*.]

51. If it is found by the report of the trial Judges that any corrupt practice has been committed by a candidate at an election or by his agent, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void. 63-64 V., c. 12, s. 123.

[This section is materially modified by section 56, *post*; see also section 55, *post*.]

52. If, on the trial of an election petition, a candidate is proved to have personally engaged any person at the election to which such petition relates, as a canvasser or agent in relation to the election, knowing that such person so engaged has, within eight years previous to such engagement, been found guilty of any corrupt practice, by any competent legal tribunal, or by the report of any Judge or other tribunal for the trial of election petitions, the election of such candidate, if he has been elected, shall be void. 63-64 V., c. 12, s. 124.

53. The provisions of the three sections last preceding shall in no case apply to any acts done at any election other than the election to which the petition refers, except as to the personal acts of the candidates, and the acts of their agents done with the knowledge and consent of the candidates. 63-64 V., c. 12, s. 125.

[The provisions of the previous sections seem to be confined to cases of corrupt practices at the election which is in question, and it is held that evidence of corrupt practices by respondent at a former election is not admissible: *Shelburne and Queen's*, 37 S.C.R. 604. It is hard to give any meaning to the exception.].

54. On the trial of an election, if it is proven that a candidate corruptly by himself, or by or with any other person, or by any other ways or means on his behalf, at any time, either before or during the election, directly or indirectly gave or provided, or caused to be given or provided, or was accessory to the giving or

Votes to be struck off in certain cases.

Corrupt practice by candidate or his agent to void election.

Employing agent who has been found guilty of corrupt practices.

Effect of corrupt practices and illegal acts at previous election.

Treating of any person by a candidate.

Votes to be struck off on trial.

providing, or paid wholly or in part any expenses incurred for, any meat, drink, refreshment or provision to or for any person, in order to be elected or for being elected, or for the purpose of corruptly influencing such person or any other person to give or refrain from giving his vote at such election there shall be struck off from the number of votes given for such candidate one vote for every person who has voted and is proved on such trial to have corruptly accepted or taken any such meat, drink, refreshment or provision. 63-64 V., c. 12, s. 110.

[For corrupt practices and their effect, see the *Dominion Election Act*, R.S.C., c. 6, ss. 265-283.]

Effect of corrupt practices if proven.

55. If, on the trial of an election petition, it is proved that any corrupt practice has been committed by or with the actual knowledge and consent of a candidate at an election, or if such candidate is convicted before any competent Court of bribery or undue influence, he shall be held guilty of corrupt practices, and his election, if he has been elected, shall be void. 63-64 V., c. 12, s. 126.

[See section 51, *ante*, and section 56, *post*, as to personal corruption by candidate: see *St. Anne's*, 37 S.C.R. 563.]

Candidate exonerated in certain cases of corrupt practices by agents.

56. If, on the trial of an election petition, the trial Judges decide that a candidate at such election was guilty, by his agent or agents, of any offence that would render his election void, and further find,—

- (a) That no corrupt practice was committed at such election by the candidate personally, and that the offences mentioned were committed contrary to the order and without the sanction or connivance of such candidate; and,
- (b) That such candidate took all reasonable means for preventing the commission of corrupt practices at such election; and,
- (c) That the offences mentioned were of a trivial, unimportant and limited character; and,
- (d) That in all other respects, so far as disclosed by the evidence, the election was free from any corrupt practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned, be void, nor shall the candidate be subject to any incapacity therefor. 54-55 V., c. 20, s. 19; 63-64 V., c. 12, s. 127.

[See sections 51, 55, *ante*.]

When personation voids election.

57. If, on the trial of an election petition, a candidate is found by the report of the trial Judges, by himself or his agents, with his actual knowledge and consent, to have aided, abetted, counselled or procured the commission at such election of the

offence of personation by any person, his election, if he has been elected, shall be declared null and void. 63-64 V., c. 12, s. 128.

JUDGES' REPORT.

The *Controverted Elections Act* provides:—

58.—(1) At the conclusion of the trial, the trial Judges shall determine whether the member whose election or return is complained of or any and what other person was duly returned or elected, or whether the election was void, and other matters arising out of the petition, and requiring their determination, and shall, except in the case of appeal hereinafter mentioned, within four days after the expiration of eight days from the day on which they shall so have given their decision, certify in writing such determination to the Speaker, appending thereto a copy of the notes of evidence.

Decision and
certificates of
trial Judges.

To be certified
to Speaker.

(2) The determination thus certified shall be final to all intents and purposes. R.S., c. 9, s. 43.

[A finding that corrupt practices have been committed, without particularizing them, was held to be sufficient: *Pontiac*, 29 S.C.R. 626; and see *North Victoria*, Hodg. 584. A report of the Judges that a person has been guilty of corrupt practices, does not *ipso facto* disqualify him from voting at a subsequent election. The report not being as to such person an adjudication: *Cornwall*, Hodg. 647; and see *North Simcoe*, *Ib.* 617.

Seem the report should not be made till the time for appealing has expired. If there is an appeal the report is to be to the Supreme Court: see section 68, *post*, p. 48.]

59.—(1) Every certificate and every report sent to the Speaker in pursuance of this Act shall be under the hands of both Judges.

Both Judges to
sign report to
Speaker.

(2) If the trial Judges differ as to whether the member whose return or election is complained of was duly returned or elected, they shall certify that difference, and the member shall be deemed duly elected or returned.

(3) If the trial Judges determine that such member was not duly elected or returned, but differ as to the rest of the determination, they shall certify that difference, and the election shall be deemed to be void.

Difference
between
them to be
certified.

(4) If the trial Judges differ as to the subject of a report to the Speaker, they shall certify that difference and make no report on the subject on which they so differ. 54-55 V., c. 20, s. 17.

Idem.

60. When any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition relates, the trial Judges shall, in addition to such

Judges' report
if corrupt
practices are
charged.

certificate, and at the same time, report in writing to the Speaker,—

- (a) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, stating the name of such candidate, and the nature of such corrupt practice;
- (b) The names of any persons who have been proved at the trial to have been guilty of any corrupt practice;
- (c) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates;
- (d) Whether they are of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable. R.S., c. 9, s. 44.

Special report
of trial Judges
at their discre-
tion.

61. The trial Judges may, at the same time, make a special report to the Speaker as to any matters arising in the course of the trial, an account of which ought, in their judgment, to be submitted to the House of Commons. R.S., c. 9, s. 45.

26. After the trial the trial Judges shall return to the Registrar the evidence and proceedings before them, and their finding on the petition.

This Rule is similar to former Rule 51.

SPECIAL CASE.

The *Controverted Elections Act* provides as follows for the stating of a special case:—

Special case
may be stated.

“63.—(1) When, upon the application of any party to an election petition duly made to the trial Judges assigned to hear the said petition, it appears to such Judges that the case raised by the petition can be conveniently stated as a special case, such trial Judges may direct the same to be so stated.

Proceedings
thereupon.

(2) Any such special case shall, as far as possible, be heard before such Judges, who shall thereupon give such judgment as to justice appertains; and in case the decision is final, the trial Judges shall certify to the Speaker their decision on such special case, in the manner and within the time hereinbefore provided in cases of election trials. R.S., c. 9, s. 49.”

INTERLOCUTORY PROCEEDINGS.

27. All interlocutory questions and matters shall be heard and disposed of before a Judge, who shall have the same control over the proceedings as a Judge has in the ordinary proceedings of the High Court. Interlocutory matters.

This is new.

Interlocutory proceedings not otherwise expressly provided for by the Act, or these Rules, are to be carried on in accordance with the procedure of the High Court in actions under the *Judicature Act* and Rules made thereunder.

The jurisdiction of the Court in interlocutory matters may usually be exercised by a single Judge. The *Controverted Elections Act*, section 62, provides as follows:—

62. Except where otherwise expressly provided by this Act, any order, act, application or thing for the purpose of this Act may be made or done by, to or before a single Judge. Power of single Judge. 54-55 V., c. 20, s. 17.

Extension of Time.—The *Controverted Elections Act* provides as follows:—

87. The Court shall, upon sufficient cause being shown, have power, on the application of any of the parties to a petition, to extend, from time to time, the period limited by this Act, for taking any steps or proceedings by such party. Extension of time may be given. R.S., c. 9, s. 64.

APPEALS.

The *Controverted Elections Act* provides:—

64. An appeal by any party to an election petition who is dissatisfied with the decision shall lie to the Supreme Court of Canada from,— Appeal to Supreme Court.

- (a) The judgment, rule, order or decision on any preliminary objection to an election petition, the allowance of which objection has been final and conclusive, and has put an end to such petition, or which objection, if it had been allowed, would have been final and conclusive and have put an end to such petition: From judgment on preliminary objections. Provided that, unless it is otherwise ordered, an appeal in the last-mentioned case shall not operate as a stay of proceedings, nor shall it delay the trial of the petition; and, Proviso.
- (b) The judgment or decision on any question of law or of fact of the Judges who have tried such petition. From judgment on questions of law or fact. R.S., c. 9, s. 50.

[An appeal lies only to the Supreme Court in *Dominion Controverted Elections* matters: see R.S.C. c. 7, s. 64; no appeal

lies to the Ontario Court of Appeal from the decision of a Court or Judge upon a preliminary objection: *Niagara*, 4 App. R. 407. An appeal lies to the Supreme Court only where the decision is final and conclusive and puts an end to the petition, or would, if the objection were sustained have done so: R.S.C. c. 7, s. 64 (a); *Gloucester*, 8 S.C.R. 205; and see *Shelburne*, 14 S.C.R. 258.

It was held that no appeal lies to the Supreme Court from an order striking out preliminary objections on the ground that they were filed too late: *West Assiniboia*, 27 S.C.R. 215; nor from an order dismissing, or refusing to dismiss, a petition for want of prosecution: *L'Assomption*, 14 S.C.R. 429; see *vide Glengarry*, *Ib.* 453; nor from an order dismissing a petition on the ground that the affidavit of the petitioner was untrue, where the objection had not been raised by way of preliminary objection, but after examination of the petitioner for discovery under section 21: *Marquette*, 27 S.C.R. 219; nor from an order extending the time for service of the petition: *King's* 8 S.C.R. 192; nor from an order restoring a petition previously ordered to be taken off the files: *Gloucester*, 8 S.C.R. 204. It has also been held that no appeal lies from an order authorizing a new record to be drawn up in place of one that had been lost: *Two Mountains*, 32 S.C.R. 55; nor from an order extending the time for trial: *Beauharnois*, 32 S.C.R. 111; nor from an order appointing a time and place of trial: *Halifax*, 39 S.C.R. 401; nor from an order or ruling of the trial Judges as to whether a petition and cross petition shall be tried together or separately: *L'audreuil*, 22 S.C.R. 1.

On consent of petitioner a judgment disallowing preliminary objections was reversed by the Supreme Court: *Lincoln*, 1 Ont. Elec. Rep. 428; and a judgment avoiding an election at a trial commenced after the prescribed time, was, on consent, and an affidavit proving the fact, also reversed by the Supreme Court: *Bagot*, 21 S.C.R. 28.

Where the Judges at the trial disagree, *semble* on appeal the case is open to the Supreme Court to deal with it on the evidence as the trial Judges might do: see *East Simeoe*, 1 Ont. Elec. Rep. 291.

Where the appellant gives notice that he discontinues his appeal, the case will be struck out of the list, and the registrar of the Supreme Court certifies to the Speaker that the judgment of the trial Judges is left unaffected: *L'Assomption*, 21 S.C.R. 29.

Questions of Fact.—The Supreme Court will be slow to reverse a decision on a question of fact: *Bellechasse*, 5 S.C.R. 91; *Montcalm*, 9 S.C.R. 93; *Berthier*, 9 S.C.R. 102; *Haldimand*, 15 S.C.R. 495. But the Supreme Court may reverse a decision if it finds the Court below has drawn wrong inferences from the facts: *North Perth*, 20 S.C.R. 331.

Where evidence is tendered at a trial on one ground only and rejected, on appeal another ground for its admissibility will not be entertained: *Shelburne*, 37 S.C.R. 604.]

65. The party so desiring to appeal shall, within eight days ^{deposit in case of appeal.} from the day on which the decision appealed from was given, deposit with the clerk of the Court with whom the petition was lodged or with the proper officer for receiving moneys paid into Court, at the place where the hearing of the preliminary objections, or where the trial of the petition took place, as the case may be, if in the Province of Quebec, and at the chief office of the Court in which the petition was presented, if in any other province, in cases of appeal other than from a judgment, rule, order or decision on any preliminary objection, the sum of three hundred dollars, and in such last-mentioned cases, the sum of one hundred dollars, as security for costs, and also a further sum of ten dollars as a fee for making up and transmitting the record to the Supreme Court of Canada; and such deposit may be made in legal tender or in the bills of any chartered bank doing business in Canada. 54-55 V., c. 20, s. 12.

66. Upon such deposit being so made, the said clerk or other proper officer shall make up and transmit the record of the case to the Registrar of the Supreme Court of Canada, who shall set down the said appeal for hearing by the Supreme Court of Canada at the nearest convenient time, and according to the rules of the Supreme Court of Canada in that behalf. R.S., c. 9, s. 51. ^{Transmission of record to Supreme Court.}

[A Judge of the Supreme Court has power to dispense with the printing of the record: see Rule S.C. 71. Unless dispensed with, it must be printed, and factum must be delivered as in other appeals: Rule S.C. 29. On the record being received by the registrar of the Supreme Court the appellant must, within a week, apply to a Judge of that Court to fix a time for the hearing of the appeal; and in case of default the respondent may move to dismiss the appeal: Rule S.C. 70. The appeal is to be set down for the day appointed and fee paid: see Cameron's Rules of S.C. p. 84; and within three days thereafter the notice of hearing is to be given as mentioned in section 67, *infra*.]

67.—(1) The party so appealing shall, within three days after the said appeal has been so set down as aforesaid or within such other time as the Court or trial Judges by whom such decision appealed from was given allow, give to the other parties to the said petition affected by such appeal, or the respective attorneys, solicitors or agents by whom such parties were represented on the hearing of such preliminary objections or at the trial of the petition, as the case may be, notice in writing of such appeal having been so set down for hearing as aforesaid, and may in such ^{Preliminary proceedings in appeal.}

notice if he so desires, limit the subject of the said appeal to any special and defined question or questions.

[The giving of notice by the appellant to the respondent of the setting down of the appeal, as required by this subsection, is a preliminary to the Court having jurisdiction to entertain the appeal; and if it is omitted the appeal may be quashed on the application of the respondent: *North Ontario*, 3 S.C.R. 374.]

Appeal to be heard and determined by Supreme Court.

(2) The appeal shall thereupon be heard and determined by the Supreme Court of Canada, which shall pronounce such judgment upon questions of law or of fact, or both, as in the opinion of such Court ought to have been given by the Court or the trial Judges whose decision is appealed from; and the Supreme Court of Canada may make such order as to the money deposited as aforesaid, and as to the costs of the appeal as it thinks just; and, in case it appears to the Court that any evidence duly tendered at the trial was improperly rejected, the Court may cause the witness to be examined before the Court or a Judge thereof, or upon commission. R.S., c. 9, s. 51.

[The Supreme Court may if it see fit, remit the petition to the Court below for further adjudication: *Bellechuse*, 5 S.C.R. 91.]

Report in case of appeal by the trial Judges.

68. If an appeal, as provided by this Act, is made to the Supreme Court of Canada from the judgment or decision of the trial Judges, they shall make to the Supreme Court of Canada the report and certificate with respect to corrupt practices hereinbefore directed to be made, and may make the special report as to any matters arising in the course of the trial as hereinbefore provided, and the same, together with the decision and findings, if any, with respect to corrupt practices by agents hereinbefore provided for, shall form a part of the record in the said matter to be transmitted to the Supreme Court on such appeal. 54-55 V., c. 20, s. 14.

Report to the Speaker by the Registrar.

69. The Registrar shall certify to the Speaker of the House of Commons, the judgment and decision of the Supreme Court, confirming, changing or annulling any decision, report or finding of the trial Judges upon the several questions of law as well as of fact upon which the appeal was made, and therein shall certify as to the matters and things as to which the trial Judges would have been required to report to the Speaker, whether they are confirmed, annulled or changed, or left unaffected by such decision of the Supreme Court; and such decision shall be final. 54-55 V., c. 20, s. 13.

[The Supreme Court may, if it sees fit, report that the respondent was guilty of corrupt practices where the facts warrant it, notwithstanding that the Judges at the trial omitted to do so: *St. Anne's*, 37 S.C.R. 563.]

PROCEEDINGS OF SPEAKER UPON JUDGES' REPORT.

70. The Speaker shall, at the earliest practicable moment after he receives the certificates and report or reports, if any, of the trial Judges or the Supreme Court of Canada, give the necessary directions, and adopt all the proceedings necessary for confirming or altering the return, or, except as hereinafter mentioned, for the issuing of a writ for a new election, for which purpose the Speaker may address his warrant, under his hand and seal, to the Clerk of the Crown in Chancery, or for otherwise carrying the determination into execution, as circumstances require. R.S., c. 9, s. 46. ^{Speaker's duty on receiving certificate.}

71. The Speaker shall, without delay, communicate to the House of Commons the determination, report and certificate of the trial Judges or of the Supreme Court of Canada and his own proceedings thereon; and, when the trial Judges or the Supreme Court of Canada make a special report, the House of Commons may make such order in respect of such special report as they think proper. R.S., c. 9, s. 47. ^{To inform the House. In case of special report.}

72. When the trial Judges or the Supreme Court of Canada in their report on the trial of an election petition under this Act, state that corrupt practices have, or that there is reason to believe, that corrupt practices have extensively prevailed at the election to which the petition relates, or that they are of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt practices have extensively prevailed is desirable, no new writ shall issue for a new election in such case except by order of the House of Commons. R.S., c. 9, s. 48. ^{If Judges report corrupt practices, and further inquiry desirable. New writ.}

WITHDRAWAL, AND ABATEMENT, OF ELECTION PETITIONS.

Withdrawal of Election Petition.—The *Controverted Elections Act* provides,—

78.—(1) No election petition under this Act shall be withdrawn without the leave of the Court or trial Judges, according as the petition is then before the Court or before the trial Judges, upon special application made in and at the prescribed manner, time and place. ^{withdrawal of petitions to be by leave of the court or judge.}

(2) No such application shall be made until the prescribed notice has been given, in the electoral district to which the petition relates, of the intention of the petitioner to make an application for the withdrawal of his petition. ^{To be after notice.}

(3) On the hearing of the application for withdrawal, any person, who might have been a petitioner in respect of the election ^{Substitution of a petitioner.}

to which the petition relates, may apply to the Court or trial Judges to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

[An application to substitute another person as a petitioner where it is sought to withdraw the petition, can only be entertained at the time the motion is made to withdraw, and the Judge's power is limited in that respect. If no application to substitute is then made, and the petition is ordered to be withdrawn, it is then out of Court and cannot be revived: *Leeds*, 2 Ont. Elec. Rep. 1.

As to leave to withdraw: see *Centre Simcoe* (O.), 31 C.L.J. 68; *South Norfolk* (O.), *Ib.* 68; *South Essex*, 2 Ont. Elec. Rep. 6; *Kingston*, 30 C.P. 389; *South Ontario*, 18 C.L.T. Occ. N. 321.

Where corrupt practices have been proved to have been committed by a respondent, *semble* it is the duty of the Court to adjudicate on the petition and not to suffer it to be withdrawn, even though the petitioner is willing to withdraw the charge: *South Renfrew*, *Hodg.* 556.

Where a petitioner abandons his claim to the seat for himself or some other person; the Court if it find the election of the respondent void, will not proceed on the recriminatory charges, if any: *Joliette*, 15 S.C.R. 458.]

Security given by petitioner may be ordered to stand, in certain cases.

(4) The Court or trial Judges may, if it or they think fit, substitute as petitioner any such applicant as aforesaid, and may also, if the proposed withdrawal is, in the opinion of the Court or trial Judges, induced by any corrupt bargain or consideration, order that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that, to the extent of the sum named in such security, the original petitioner shall be liable to pay the costs of the substituted petitioner.

[The word "security" in the last line but one appears to be a mistake, "order" was probably intended.]

If not so ordered, security to be given by substituted petitioner.

(5) If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition, and within the prescribed time after the order of substitution.

Effect of substitution.

(6) Subject as aforesaid, a substituted petitioner shall stand in the same position, as nearly as may be, and be subject to the same liabilities as the original petitioner.

Costs.
All petitioners must join in withdrawal.

(7) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent, unless the Court or trial Judges otherwise order, and when there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners. R.S., c. 9, s. 56.

79. In every case of withdrawal of an election petition, under this Act, if the Court or trial Judges are of opinion that the withdrawal of such petition was the result of any corrupt arrangement or in consideration of the withdrawal of any other petition, the Court or trial Judges shall report such opinion to the Speaker, stating the reasons therefor and the circumstances attending the withdrawal. R.S., c. 9, s. 57.

Report to Speaker if withdrawal is corrupt.

28.—(1) Notice of an application for leave to withdraw a petition (Form 6), shall be in writing and shall be signed by the petitioner or his agent; and shall state the ground of the application.

Notice of application to withdraw petition.

[See Form 24, *post*, p. 83.]

(2) The notice shall be left with the Registrar.

(3) A copy of the notice shall be given by the petitioner to the respondent and to the Sheriff, who shall forthwith cause a notice (Form 7) to be published.

Publication of notice.

This embodies the provisions of former Rules 38, 39, 40: see Form No. 24, *post*, p. 84.

The sheriff referred to in this Rule means the sheriff of the electoral district in question: see Rule 1 (*g*). The former Rule 40 required the notice to be sent to and published by the returning officer.

29.—(1) Any person who might have been a petitioner may, within five days after the first publication of such notice, give notice in writing signed by him, or on his behalf, to the Registrar of his intention to apply to be substituted for the petitioner, but the want of such notice shall not defeat an application for that purpose, if made.

Notice of intention to apply to be substituted as petitioner.

[Former Rule 41 was to the same effect.]

(2) The time and place for hearing the application shall be fixed by a Judge, and the application shall be heard either before the Court or before the trial Judges, as he may deem advisable, but the time fixed shall be not less than one week after the notice of the intention to apply has been given to the Registrar, and notice of the time and place for the hearing shall be given to every person who has given notice to the Registrar of his intention to apply to be substituted as a petitioner and otherwise in such manner and at such time as the Judge directs.

Hearing of application to be substituted.

[Former Rule 42 was to the same effect.]

(3) The Judge may also direct such other notice to be given as he may see fit.

This is new.

An application to substitute a petitioner on the ground that more than three months* had elapsed since the presentation of the petition without the day for trial being fixed, was dismissed, it appearing that the presence of the respondent at the trial was necessary, and the time during which Parliament was in session during the three months was not to be included: *Colchester*, 38 N.S.R. 232.

Where an application is made to substitute a new petitioner for one who has died *pendente lite*, in the event of rival applications, that of the person most likely to prosecute the petition with effect is to be preferred: *Pictou*, 38 N.S.R. 242.

The Court has no power to substitute a new petitioner unless either no day of trial has been fixed within the time prescribed by the Act: see section 39 (2); or where notice of withdrawal has been given by the petitioner: see section 29 (1). Where, therefore, a petition came regularly down to trial, an application of a third party at the trial to be substituted was refused, and there being no evidence in support of the petition it was dismissed with costs: *South Essex*, 2 Ont. Elec. Rep. 6.

Any elector substituted as petitioner must make affidavit verifying the petition: see *ante*, p. 12, s. 6.

Abatement of Petitions.—The provisions of the Act in reference to the abatement of petitions by the death of the petitioner or respondent are as follows:

Abatement
by death of
petitioner.

80.—(1) An election petition under this Act shall be abated by the death of a sole petitioner, or of the survivor of several petitioners.

Costs.

(2) The abatement of a petition shall not affect any liability for the payment of costs previously incurred.

Notice of
abatement.

(3) On the abatement of a petition, the prescribed notice of such abatement having taken place shall be given in the electoral district to which the petition relates; and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the Court or trial Judges, in the prescribed manner, and at the prescribed time and place, to be substituted as a petitioner.

Substitution of
new petitioner.

[As to affidavit required from an elector substituted as petitioner, see *supra*.]

By the court or
trial Judges.

(4) The Court or trial Judges may, if it or they think fit, substitute as a petitioner any such applicant who is desirous of being

*See R.S.C. c. 7, s. 39 (2) *supra* p. 32.

substituted, and on whose behalf security to the same amount is given as is required in the case of a new petition. R.S., c. 9, s. 58.

30. Notice of the abatement of a petition by death of the petitioner or surviving petitioner, under section 80, shall be given by the respondent or any person who might have been a petitioner in like manner as notice of an application to withdraw a petition; and the time within which application may be made to be substituted as a petitioner shall be one calendar month, after the notice is published, or such further time as, upon consideration of any special circumstances, the Court or the trial Judges may allow.

Notice of
abatement.

[Former Rule 43 was to the same effect. As to the giving, and publication, of the notice: see Rule 28, *ante*, p. 51.]

Death of Petitioner.—Where there are rival applications to be substituted as petitioner, and the first applicant was proved to be concerned in securing the election of the respondent, his application was rejected: *Pictou*, 38 N.S.R. 242.

Death, etc., of Respondent.—The *Controverted Elections Act* provides as follows:—

81.—(1) If, before or during the trial of an election petition under this Act,—

Abatement by
death, etc., of
respondent.

- (a) The respondent dies;
- (b) The House of Commons resolves that the respondent's seat is vacant;
- (c) The respondent gives notice to the Court or trial Judges in and at the prescribed manner and time that he does not intend to oppose or further to oppose the petition; or,
- (d) The respondent is summoned to Parliament as a member of the Senate;

notice of such event shall be given in the prescribed manner in the electoral district to which the petition relates.

Notice.

(2) Within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the Court or trial Judges to be admitted as a respondent to oppose the petition or so much thereof as remains undisposed of, and such person shall, on such application, be admitted accordingly to oppose such petition or such undisposed of portion thereof, either with the respondent, if there is one, or in place of the respondent; and any number of persons, not exceeding three, may be so admitted.

Substitution of
new respon-
dent.

Adjournment
of trial.

(3) If either of such events happens during the trial, the trial Judges shall adjourn the same, in order that notice that such event has happened may be given as herein provided; and the person or persons so admitted shall be subject to the same liability as the respondent with respect to any costs thereafter incurred. R.S., c. 9, s. 59.

Disposal of
deposit if
respondent
dies.

82. Notwithstanding the abatement of a petition by reason of the death of the respondent, the Court or trial Judges may make such order, not inconsistent with the provisions of this Act, for the payment of costs previously incurred and for the payment out of Court of any moneys deposited as security for costs, as to justice may appertain. 54-55 V., c. 20, s. 16.

Death of
respondent,
or summons
to Senate, etc.

31.—(1) If the respondent dies, or is summoned to Parliament as a member of the Senate, or if the House of Commons has resolved that his seat is vacant, any persons who might have been a petitioner may give notice of the fact in writing signed by him or on his behalf.

Notice of
withdrawal
of defence.

(2) A respondent may give notice that he does not intend to oppose or further oppose the petition, by leaving notice in writing of his intention, signed by him, or on his behalf, at the office of the Registrar six clear days before the day appointed for the trial.

(3) Upon receipt of any such notice the Registrar shall forthwith send a copy thereof by registered post to the petitioner or his agent, and a copy in like manner to the Sheriff who shall cause the same to be published.

Time for
applying to be
admitted as
respondent.

(4) The time for applying to be admitted as a respondent in any or either of the events mentioned in section 81 shall be within ten days after such notice has been sent and published as directed by subsection 3, or within such further time as the Court or a Judge may allow.

This Rule is a variation of the provisions embraced in former Rules 44, 45, 46, 47.

The provisions of the Act in regard to a respondent withdrawing his defence are as follows:—

Respondent
not opposing
petition.

83. A respondent who has given the prescribed notice that he does not intend to oppose or further oppose the petition, shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Commons until the House has been informed of the report on the

petition; and the Court or trial Judges shall, in all cases in which such notice has been given in the prescribed time and manner, report the same to the Speaker. R.S., c. 9, s. 60.

The Act also provides as follows:—

84. When an election petition under this Act complains of a double return, and the respondent has given notice in the prescribed time and manner that it is not his intention to oppose the petition, and no party has been admitted, in pursuance of this Act, to oppose the petition, then the petitioner, if there is no petition complaining of the other member returned on such double return, may withdraw his petition, by notice addressed to the prescribed officer, and upon such withdrawal, the prescribed officer shall report the fact to the Speaker, and the House of Commons shall, thereupon, give the necessary directions for amending the said double return, in such manner as the case requires. R.S., c. 9, s. 61.

The Senior Registrar would appear to be the prescribed officer referred to in this section: see Rule 31, *ante*, p. 54.

COSTS.

32.—(1) Except as otherwise provided by these Rules the costs office fees payable on the proceedings shall be those payable on like proceedings in an action and shall be paid in Ontario law stamps.

[Former Rules 48 and 58 contained similar provisions. For other provisions see Rule 12, and R.S.C., c. 7, s. 65, *supra*, p. 46.]

(2) Subject to the provisions of the Act the fees payable to solicitors and counsel shall be those payable for the like proceedings and matters in an action.

[This is new.]

(3) The costs of publication of any matter required to be published shall be paid by the person moving in the matter, and shall form part of the general costs of the petition.

[This is new.]

The publications here referred to are the notices required to be published by the returning officer under section 16. The notice of trial to be published by the sheriff under Rule 18 (2), and the notice of withdrawal of a petition required to be published by the sheriff under Rule 28 (3), and of the abatement of a petition under Rule 30, and of the notice of the death, or summons to the Senate, of the respondent, or of respondent's withdrawal of defence, or of the seat being declared vacant under Rule 31 (3).]

Taxation.

(4) Costs shall be taxed by the senior taxing officer at Toronto upon the order by which they are payable and when taxed may be recovered by execution, or if there is money in Court available for the purpose may by order of the Court or a Judge be paid out of such money.

[Former Rule 48 contained similar provisions.]

Witness fees.

(5) The fees and allowances to witnesses shall be according to the tariff of the Court and shall be ascertained and the amount thereof certified by the senior taxing officer at Toronto.

[Former Rule 33 provided that the reasonable costs of any witness should be ascertained by the registrar.]

The Act provides as to the expenses of witnesses as follows:—

Expenses of witnesses.

47. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this Act, according to the scale allowed to witnesses on the trial of civil actions in the superior courts in the same Province, may be allowed to such person by a certificate under the hand of the trial Judges or of the Clerk of the Court; and such expenses, if the witness was called and examined by the trial Judges, shall be deemed part of the expenses of providing a Court, and in other cases shall be deemed costs of the party calling the witness, and shall be taxed against such party interested in the trial of such petition, as the trial Judges determine. R.S., c. 9, s. 40.

How paid.

[The Court will not interfere as to the amount to be allowed for witnesses, called in part to support charges which fail, that being considered a matter for the taxing officer: *Niagara*, Hodg. 568.]

Costs of proceedings under this Act.

73.—(1) All costs, charges and expenses of and incidental to the presentation of an election petition under this Act, and to the proceedings consequent thereon, with the exception of such costs, charges and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to or those opposing the petition, in such manner and in such proportions as the Court or trial Judges determine, regard being had to the disallowance of any costs, charges or expenses which, in the opinion of the Court or trial Judges have been caused by vexatious conduct, unfounded allegations or unfounded objections, on the part either of the petitioner or of the respondent, and regard being had to the disallowance of any needless expense by throwing the burden of

defraying the same on the parties by whom it has been caused, whether such parties are or are not on the whole successful.

(2) The costs may be taxed in the prescribed manner, but ^{Costs.} according to the same principles as costs are taxed between parties in actions in the superior courts, and such costs shall be recoverable in the same manner as the costs in the said actions in the same Province, or in such other manner as is prescribed. R.S., c. 9, s. 52.

[Where bribery by an agent of the respondent was proved and the election declared void, costs were ordered to follow the event, even though personal charges of corruption had been made but not proved, no extra expense having been occasioned by such charges: *South Grey*, 8 C.L.J. (N.S.) 17; and see *Cornwall*, 10 C.L.J. (N.S.) 313; costs of unsuccessful preliminary objections should ordinarily be ordered to be paid by the respondent: *South Renfrew*, 10 C.L.J. (N.S.) 286; and the cost of charges on which a party fails should be borne by such party, though he is in the main successful; but the Judges will not decide what witness fees should be paid by the defeated party; that is a matter for the taxing officer: *Niagara*, Hodg. 568; and see *Prescott*, 32 U.C.Q.B. 303. Costs of particulars not properly prepared were disallowed: *East Northumberland*, Hodg. 577.

It is not a champertous transaction for a political association with which a petitioner is connected to agree to pay his costs: *North Simcoe*, Hodg. 617.]

74.—(1) No greater counsel fee or fees shall be taxed, as between party and party, in respect of or in connection with the trial, if it does not last longer than one day, than fifty dollars, and, when the trial continues beyond one day, a sum not exceeding forty dollars for each additional day the trial continues, whether one or more counsel are engaged at the trial. Counsel fees limited.

[See *Bergeron v. Brunet*, 5 Que. P.R. 434; *North Victoria*, 39 U.C.Q.B. 147.]

(2) Except as to such witness fees and other actual disburse- ^{Costs limited.} ments, in respect of evidence taxable in ordinary actions between party and party, as are allowed by the judgment or order of the Court allowing or apportioning costs, no greater sum, including counsel fee, than three hundred dollars shall be taxed or taxable against either party as costs in the cause. 54-55 V., c. 20, s. 15.

75.—(1) If costs are awarded in favour of any party against any petitioner, such party shall, after the expiration of thirty days from the rendering of the decision by the trial Judges, or, in case of an appeal, by the Supreme Court of Canada, upon the production of a certificate of taxation from the proper officer, be entitled to receive out of the deposit the amount taxed to him as aforesaid, if the aggregate of the costs taxed against the said Recovery of costs against petitioner out of deposit.

petitioner, certificates whereof are within the said period of thirty days filed with the registrar, clerk or other proper officer, does not exceed the deposit.

[The proper officer referred to in the last line but one of this section would appear to be the accountant. The order for payment will also have to be produced to that officer as well as the certificate of taxation.]

Or, if deposit
be insufficient,
by execution.

(2) If the total amount of the said certificates so filed as aforesaid exceeds the deposit, then such party shall be entitled to recover out of such deposit his proportion thereof.

Execution.

(3) In the event last aforesaid, such party shall be entitled forthwith to issue execution, according to the practice in ordinary cases, against the petitioner's goods or lands, for the residue of the costs so taxed to him as aforesaid. R.S., c. 9, s. 53.

Supreme
Court may
adjudge that
costs be paid
fully or in
part by either
party.

76. In appeals under this Act to the Supreme Court of Canada, the said Supreme Court may adjudge the whole or any part of the costs in the Court below to be paid by either of the parties; and any order directing the payment of such costs shall be certified by the Registrar of the Supreme Court of Canada to the Court in which the petition was filed, and the same proceedings for the recovery of such costs may thereupon be taken in the last mentioned Court as if the order for payment of costs had been made by that Court or by the Judges before whom the petition was tried. R.S., c. 9, s. 54.

Recovery of
such costs.

When agent
may be made
to pay costs.

77.—(1) If, on the trial of an election petition under this Act, it is proved that any corrupt practice has been committed by an agent of the candidate without his knowledge or consent, or if it is determined that the election is void by reason of any act of an agent committed without the knowledge and consent of the candidate, and the trial Judges are of opinion that costs should be awarded to the petitioner or other party alleging the corrupt practice, the agent may be condemned to pay such costs.

Summons to
agent.

(2) In such case the trial Judges shall order that such agent shall be summoned to appear at a time fixed in such summons, in order to determine whether such agent shall be condemned to pay such costs.

If he does not
appear.

(3) If, at any time so fixed, the agent so summoned does not appear, he shall be condemned, on the evidence already adduced, to pay the whole or a due proportion of the costs awarded to the petitioner or other party aforesaid; and if he appears, the Court or the trial Judges, after hearing the parties and such evidence as is adduced, shall give such judgment as to law and justice appertains.

Process to
recover costs.

(4) The party to whose costs such agent shall be condemned to pay such costs against such agent in like manner as he might have

such process against the respondent; and no process shall issue against the respondent to recover such costs, nor shall the sum be paid out of any money deposited as security until after the return of process against such agent. R.S., c. 9, s. 55; 54-55 V., c. 20, s. 20.

33.—(1) The account of the shorthand reporter shall be paid out of the deposit on the order of the trial Judges or one of them. Costs of shorthand writer.

[This is new, but see former Rule 56.]

(2) All claims to money deposited as security under section 14 shall be disposed of by the Court or a Judge. Claims on deposit.

[Former Rule 16 was to the like effect. The respondent's costs (if any) to which he is entitled against the petitioner are payable on the production of the order, and the taxing officer's certificate: see section 75 (1), *supra*.]

(3) When the money so deposited is no longer required for securing the payment of the costs, charges and expenses for which it is security, the Court or a Judge may direct that it be paid out to the petitioner or otherwise disposed of as justice may require. Balance of deposit.

[Former Rule 17 was to the like effect. On application for such order proof must be given that all claims properly payable out of the deposit have been satisfied; as to claims of the shorthand writer: see *supra*, p. 39, and as to those of the returning officer, and sheriff: see Rule 32 (3), *supra*, p. 55.]

(4) An order may be made under subsection 3 of this Rule, after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for, or as the Court or a Judge may require.

[Former Rule 18 was to the like effect.]

(5) The order may direct payment either to the party who deposited the money, or to any person entitled to receive the same.

[The former Rule 19 was to the like effect.]

(6) Upon such order being made the amount may be paid out of Court.

[The former Rule 20 was to the like effect.]

Accountant's
duty.

(7) The Accountant of the Supreme Court of Judicature for Ontario shall keep a book in which shall be entered from time to time the amounts deposited and the petitions to which they are respectively applicable, all payments made thereout with the names of the persons to whom paid and the dates of the payments, and such book shall be open to inspection by all parties concerned without payment of any fee.

[New. Former Rule 21 required the clerk of the Court to keep the account, but the former Rule 57 was subsequently passed, which required the deposit to be paid into Court by the registrar, and the accountant thereby became the proper person to keep the account.]

Judicature
Rules apply.

34. In and as to matters not provided for by the *Dominion Controverted Election Act* or by these Rules, the practice and procedure prescribed by *The Ontario Judicature Act* and the Rules made thereunder shall apply.

[This is new.]

Former Rules
rescinded.

35. All existing Rules are rescinded.

This Rule, though in general terms, is only intended to apply to all existing Rules of the High Court relating to election petitions.

SUMMARY TRIAL OF CORRUPT PRACTICES AT ELECTIONS.

The Act makes the following provisions for the summary trial of persons who, upon the trial of an election petition, are found to have been guilty of corrupt practices at the election, viz.:—

Persons appearing
to the
Judges to have
committed
corrupt
practices.

92.—(1) If, on the trial of an election petition relating to the election of a member of the House of Commons, it is determined that any person has been guilty of a corrupt practice, within the meaning of this Act, or if, on such trial, there is in the opinion of the trial Judges sufficient evidence available that any person has been guilty of such corrupt practice as aforesaid to warrant his being put on his trial, the trial Judges shall order that such person shall be summoned to appear at a time and place to be

summoned.

fixed in such summons in order to be summarily tried for the offence, which shall be specified in the summons.

(2) The time so fixed shall not be more than thirty days from the date of the summons, and the place shall be the nearest convenient Court House or other available room. R.S., c. 9, s. 69.

93.—(1) The trial Judges may, by recognizance, bind such person to appear at the said time and place to be tried, and may, by recognizance, bind any person whom they consider necessary, to be examined touching the matter, to attend at the said time and place, and give evidence upon the trial. May be bound by recognizance so to appear.

(2) Any such recognizance shall be of the same effect, and any forfeiture thereof shall be enforced in the like manner, and any refusal to enter into the same shall entail the same consequences, as if the recognizance had been given or required in any of the superior courts having criminal jurisdiction within the Province in which the election was held. R.S., c. 9, s. 70. Recognizance, how enforced.

94. No such summons, in respect of a corrupt practice, shall be issued or prosecuted if it appears to the trial Judges that a criminal prosecution for the same matter against the same person has been tried before the issue of the summons. R.S., c. 9, s. 84. Provision, if offender has already been tried.

95. Upon the issue of any such summons, any criminal prosecution pending in any other Court in respect of the same matter shall be stayed. R.S., c. 9, s. 85. Pending prosecution stayed.

96. The trial Judges shall, forthwith after the issue of such summons report to the Secretary of the Province in which the election was held, for the information of the Lieutenant-Governor, and also to the Secretary of State of Canada, for the information of the Governor-General, the fact of the issuing thereof. R.S., c. 9, s. 71. Issue of summons to be reported by Judges.

97. The county attorney, or other officer on whom, in case the person had been charged with an indictable offence, the like duty would have devolved, shall subpoena to attend at the trial the witnesses who, at the trial of the election petition, deposed to any facts material to the charge, and such other witnesses as he thinks requisite to prove the charge. R.S., c. 9, s. 72. Witnesses to be summoned and by whom.

98. The Attorney-General of Canada shall instruct counsel to assist the local authorities in the due prosecution of the accused. R.S., c. 9, s. 73. Counsel for prosecution.

99. If the accused, being duly served a reasonable time before the time fixed for the trial, or being bound by recognizance to appear to be tried, fails to appear at the time and place fixed for the trial, the trial may be proceeded with in his absence. R.S., c. 9, s. 74. Failure of accused to appear.

Summary trial and judgment, and before whom.

100. One of the trial Judges, or, if neither of them is able to attend, then, at the request of the trial Judges or one of them, some Judge competent under this Act to sit on the trial of an election petition for any district of the Province within which the electoral district in question is situate, or one of the Judges of a superior court having criminal jurisdiction within such Province, shall, without a jury, and in a summary manner, try the accused, and shall, after hearing the counsel for the prosecution and also, if the accused is present, such accused or his counsel, and also such evidence as is adduced on either side, give such judgment as to law and justice appertains. R.S., c. 9, s. 75.

Reception of judge.

101. The Judge trying the accused shall be received and attended at the trial in the same manner, as far as circumstances admit, as if a sitting were being held of the Provincial Court of which he is a member. R.S., c. 9, s. 76.

Expenses of trial, etc., how payable.

102. The travelling expenses of the Judge trying the accused, and any expenses necessarily incurred by the sheriff or other officer in connection with the trial, shall be defrayed out of any moneys provided by Parliament for the purpose. R.S., c. 9, s. 77.

Judge's court to be a court of record.

103. The Judge trying the accused shall be, for all the purposes of the trial and the proceedings connected therewith, or relating thereto, a court of record, and shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority as a Judge sitting in any superior court having criminal jurisdiction within the Province; and the record of any such case shall be filed in the same manner as indictments among and as a part of the records of such superior court. R.S., c. 9, s. 78.

Record of trial to be filed.

Summoning and swearing of witnesses.

104. Witnesses shall be summoned or subpoenaed and sworn in the same manner, as nearly as circumstances admit, as in cases in a superior court having criminal jurisdiction within the Province. R.S., c. 9, s. 79.

Witnesses bound to attend and give evidence.

105. Any witness, summoned or subpoenaed to attend and give evidence at the trial, whether for or against the accused, shall be bound to attend, and remain in attendance throughout the whole trial; and if he fails so to do, he shall be held guilty of contempt of court and may be proceeded against therefor accordingly. R.S., c. 9, s. 80.

Proceedings in case of witnesses disobeying the order of the court.

106.—(1) Upon proof to the satisfaction of the summary trial Court of the service of the subpoena upon any witness who fails to attend, and that the presence of such witness is material to the ends of justice, the summary trial Court may, by its warrant, cause such witness to be apprehended and forthwith brought before it to give evidence and to answer for his disregard of the subpoena;

and such witness may be detained on such warrant before the summary trial Court or in the common gaol with a view to secure his presence as a witness, or in the discretion of the summary trial Court he may be released on a recognizance with or without sureties conditioned for his appearance to give evidence and to answer for his default in not attending as for a contempt.

(2) The summary trial Court may, in a summary manner examine into and dispose of the charge of contempt against such witness, who, if found guilty thereof, shall be liable to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding ninety days, with or without hard labour, or to both. R.S., c. 9, s. 81. Fine and imprisonment for contempt.

107. In case of conviction of a corrupt practice the offender shall be sentenced to imprisonment in the common gaol for a term not exceeding three months, with or without hard labour, and to a fine not exceeding two hundred dollars and to pay the costs of the prosecution which shall be taxed by the proper officer under the direction of the summary trial Court; and, if the said fine and costs are not paid before the expiration of such term, then to imprisonment for such further time as they remain unpaid, not exceeding three months. R.S., c. 9, s. 82. Punishment of offender, if convicted.

108. All fines recovered under this Act shall belong to His Majesty for the public uses of Canada. R.S., c. 9, s. 83. Application of fines.

109. No person tried under the provisions of this Act for any such corrupt practice shall be subject to be otherwise criminally prosecuted in respect of the same matter; but nothing in this section contained shall affect any disqualification imposed on such person under the operation of any statute. R.S., c. 9, s. 86. Offender not to be twice tried. Provision as to disqualification.

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SCHEDULE OF FORMS.

1. FORM OF PETITION.

(Form 1 in Rules (Rule 6)).

The Dominion Controverted Elections Act.

Election of a member for the House of Commons for *(state the* Petition.
place) holden on the day of , 19 .
 Dominion of Canada, } The Petition of
 Province of Ontario, } of , whose name is sub-
 To wit: } scribed.

1. Your petitioner is a person who was duly qualified to vote at the above election *(or claims to have had a right to be returned or elected at the above election, or was a candidate at the above election, as the case may be)*.

2. The election was holden on the day of , 19 , when *A.B.*, *C.D.* and *E.F.* were candidates, and the returning officer has returned *A.B.* as being duly elected.

3. Your petitioner says that *(state the facts and grounds on which the petitioner relies)*.

Wherefore your petitioner prays that it may be determined that the said *A.B.* was not only duly elected or returned, and that the election was void, *(or that the said E.F. was duly elected and ought to have been returned, or as the case may be)*.

C. D.

Note. Where there are more petitioners than one the form is to be varied accordingly.

2. ALLEGATIONS IN PETITION.

3. Your petitioner says that the respondent himself was, and ^{General} that his agents, and divers persons on his behalf, with his actual ^{allegation of} knowledge and consent, were, before, during, at and after the said election, guilty of bribery, treating, personation, undue influence and corrupt practices, as defined by the *Dominion Elections Act*, the *Dominion Controverted Elections Act*, and other Acts of the Parliament of Canada, or recognized as such by the common law of Parliament.

4. Your petitioner further says that the respondent by himself ^{Bribery by} was, and that his agents, and divers persons on his behalf, by and ^{giving, lending} or promising ^{money, etc.} with his actual knowledge and consent, were, before, during, at and after the said election, guilty of directly and indirectly giving ^{R.S.C., c. 6,} ^{s. 265 (a).}

and lending, and agreeing to give and lend, and offering and promising money and other valuable consideration to and for persons entitled to vote at the said election, and to and for other persons and to and for persons on behalf of persons entitled to vote at the said election, and on behalf of other persons, in order to induce such persons to vote or to refrain from voting at the said election, and of corruptly doing the said acts and each of them on account of persons having voted or refrained from voting at the said election.

Bribery by giving or promising offices as employment.

R.S.C., c. 6,
s. 265 (b).

5. Your petitioner further says that the respondent by himself was, and that his agents, and divers persons on his behalf, by and with his actual knowledge and consent, were, before, during, at and after the said election, guilty of directly or indirectly giving and procuring and agreeing to give and procure, and of offering and promising, and of promising to procure, and to endeavour to procure office, places and employment to and for persons entitled to vote at the said election, and to and for other persons in order to induce persons to vote or refrain from voting at the said election, and of corruptly doing the said acts and each of them on account of persons having voted or refrained from voting at the said election.

Bribery by loans, gifts, promises, etc.

R.S.C., c. 6,
s. 265 (c).

6. Your petitioner further says that the respondent by himself was, and that his agents, and divers persons on his behalf, by and with his actual knowledge and consent, were, before, during, at and after the said election, guilty of making gifts, loans, offers, promises, procurements and agreements, as aforesaid, to and for divers persons in order to induce persons to procure and to endeavour to procure the return of the said respondent to serve in the House of Commons of Canada, and to procure, and to endeavour to procure the votes of persons at the said election.

Unlawfully securing promises to return respondent.

R.S.C., c. 6,
s. 265 (d).

7. Your petitioner further says that the respondent by himself was, and that his agents, and divers persons on his behalf, by and with his actual knowledge and consent, and divers persons who voted for the respondent at the said election, and divers other persons were, before, during, at and after the said election, guilty of procuring, and of engaging and promising and endeavouring to procure, upon or in consequence of such gifts, loans, offers, promises, procurements and agreements as aforesaid, the return of the said respondent to serve in the House of Commons, and the votes of divers persons at the said election.

Advancing money to be used for bribery.

R.S.C., c. 6,
s. 265 (e).

8. Your petitioner further says that the respondent by himself was, and that his agents and divers persons on his behalf were, by and with his actual knowledge and consent, before, during at and after the said election, guilty of advancing and of paying, and of causing to be paid money to and to the use of other persons, with the intent that such money or part thereof should be expended in

bribery and corrupt practices at the said election, and of, knowingly paying and causing to be paid money to persons in discharge and repayment of money wholly or in part expended in bribery and corrupt practices at the said election.

9. Your petitioner further says that the respondent by himself, and by other ways and means was, and that his agents and other persons on his behalf, were, before, during, at and after the said election, guilty of corruptly giving and providing, and causing to be given and provided, and being accessory to the giving and the providing, and of paying, wholly and in part, expenses incurred for meat, drink, refreshment and provision to and for persons in order to be elected, and for being elected, and for the purpose of corruptly influencing such persons and others to give or to refrain from giving their votes at the said election, and was and were further guilty of giving and of causing to be given to voters on nomination day and on polling day, on account of such voters having voted and of being about to vote, meat, drink, and refreshment, and money and tickets to enable such voters to procure refreshments.

Unlawfully providing refreshments, etc.

R.S.C., c. 6, s. 266.

s. 268.

10. Your petitioner further says that the respondent by himself was, and his agents, and divers persons on his behalf were, guilty, at the said election, of providing and furnishing drinks and other refreshments, at the expense of the respondent, to electors during the said election, and of paying for, procuring and engaging to pay for such drinks and other refreshments.

s. 267.

Ante pp. 41-2, s. 54.

11. Your petitioner further says that the respondent by himself was, and that his agents, and divers persons on his behalf were, before, during and at the said election, guilty of committing the offence of exercising undue influence as defined by the *Dominion Elections Act* and amending Acts.

Undue influence.

R.S.C., c. 6, s. 269.

12. And your petitioner says that the said respondent was, and his agents, and other persons on his behalf, with his actual knowledge and consent were, guilty of making use of or of threatening to make use of force, violence and restraint, and of inflicting and threatening the infliction by himself, or by or through other persons, of injury, damage, harm and loss, and of practising intimidation upon and against persons in order to induce and compel such persons to vote and to refrain from voting, and on account of such persons having voted and having refrained from voting at the said election, and by abduction, duress and by false and fraudulent pretences, devices and contrivances, impeded, prevented and otherwise interfered with the free exercise of the franchise of voters, and thereby compelled, induced and prevailed upon voters to vote and to refrain from voting at the said election, whereby the said respondent is incapacitated from serving in Parliament for the said electoral district, and the said election

Threats and intimidation.

R.S.C., c. 6, s. 269.

and the return of the said respondent were and are wholly null and void.

Hiring teams,
etc., and
paying for
vehicles for
voters.

R.S.C., c. 6,
s. 270.

7-8 E. 7, c. 26,
s. 30.

13. Your petitioner further says that the respondent by himself was, and that his agents, and divers persons on his behalf were, before, during and after the said election, guilty of hiring and paying for and promising to pay for horses, teams, carriages, cabs, carts, wagons, sleighs, railway trains, electric cars, automobiles and other vehicles and conveyances, and boats, steamboats and other vessels, for the purpose of conveying voters to and from the polls, and to and from the neighbourhood thereof, at the said election, and also of paying the travelling and other expenses of voters in going to and returning from the said election.

Contributing
to fund to
pay travelling
expenses or
providing
tickets.

R.S.C., c. 6,
ss. 270-1.

7-8 E. 7, c. 26,
s. 31.

14. Your petitioner further says that the respondent by himself, and his agents, and divers persons on his behalf did, before, during, at, and after the said election, contribute to, form and raise a central fund, for the purpose, among others, of paying the travelling and other expenses of persons entitled to vote at the said election, and of other persons, and for the purpose of purchasing railway and other tickets to be used in conveying such persons to or from the polls at the said election, and that such fund being so formed as aforesaid, the said respondent, by himself, and persons by and with his actual knowledge and consent, and his agents, and divers persons on his behalf did, before, during, at, and after the said election, forward money and tickets from the said central fund to such persons, and to others on their behalf, for the purpose of, and thereby and therewith paying and satisfying the travelling expenses of such voters in travelling to and from the said election, and from places both inside and outside of the said electoral district, and such money and tickets were used for the purposes aforesaid, and otherwise.

Personation.

R.S.C., c. 6,
s. 272.

Ante p. 42,
s. 57.

Counselling,
aiding and
abetting
corrupt
practices.

R.S.C., c. 6,
s. 272.

15. And your petitioner further says that the agents of the respondent and other persons on his behalf were, before, during and at the said election, guilty of the offence of personation, as defined by the *Dominion Elections Act* and amending Acts.

16. Your petitioner further says that the respondent by himself was, and his agents, and divers persons on his behalf were, before, during, at and after the said election, guilty of aiding, abetting, counselling and procuring the commission at the said election of the offence of personation, as defined by the *Dominion Elections Act*, and amending Acts.

Corruptly
inducing false
oaths by
voters.

R.S.C., c. 6,
ss. 273-4, 281.

17. Your petitioner further says that the respondent by himself was, and his agents and divers persons on his behalf were, before, during, at and after the said election, guilty of corruptly compelling and inducing and endeavouring to induce divers persons to personate divers voters and to take false oaths in matters wherein oaths are required under the *Dominion Elections Act*, and amending Acts.

18. You petitioner further says that the respondent by himself was, and his agents and divers persons on his behalf were, before during, and at the said election, guilty of voting and inducing and procuring persons to vote at the said election, knowing that such persons were not entitled to vote thereat.

Inducing persons unlawfully to vote.
R.S.C., c. 6, s. 275.

19. And your petitioner further says that the respondent, before and during the said election, personally, and his agents and divers persons on his behalf, engaged divers persons at the said election as canvassers and agents in relation to the said election, knowing that such persons so engaged had within eight years previous to such engagement been found guilty of corrupt practices by a competent legal tribunal, and by the report of Judges for the trial of election petitions.

Engaging canvassers found guilty of corrupt practices.
Ante p. 41, s. 32.

20. And your petitioner further says that the respondent personally, and his agents and divers persons on his behalf, before and during the said election, engaged, employed and induced divers persons, not being voters, who resided outside Canada, to canvass for votes, and in divers way to endeavour illegally to induce voters to vote and to refrain from voting at the said election in order to secure the election of the respondent.

Employing alien canvassers, etc.
7-s E. 7, c. 26, s. 33.

21. Your petitioner further says that the respondent by himself was, and that his agents, and divers persons on his behalf were, in order to induce persons to allow themselves to be nominated as candidates, and in order to induce persons to refrain from becoming candidates, and in order to induce persons to withdraw after having become candidates, guilty of giving and procuring offices, places and employments, and of agreeing to give and procure, and of offering and promising to procure, and of endeavouring to procure offices, places and employments for such persons.

Unlawfully inducing persons to refrain from being candidates.

22. Your petitioner further says that the respondent by himself was, and that his agents, and divers persons on his behalf were, before, during and at the said election, guilty of knowingly publishing false statements of the withdrawal of [the said above mentioned], one of the candidates at the said election, for the purpose of promoting and procuring the election of the respondent.

Publishing false statements.
R.S.C., c. 6, s. 276.

23. Your petitioner further says that the respondent by himself was, and that his agents and divers persons on his behalf were, guilty of printing, publishing, distributing and posting up, or causing to be printed, published, distributed, and posted up, printed advertisements, hand bills, placards, posters and dodgers, having reference to the said election, without having thereon the name of the printer and publisher thereof, such advertisements, handbills, placards, posters and dodgers containing matter injurious to [] one of the candidates at the said election.

Omitting to disclose name of publisher.
7-s E. 7, c. 25, s. 34.

Publication of
defamatory
charges against
candidate.

7-8 E. 7, c. 26,
s. 35.

Payment and
receipt of
bribes for
votes or
assistance.

R.S.C., c. 6,
s. 265 (f).

Agents and
voters receiv-
ing bribes.

R.S.C., c. 6,
s. 265 (g).

Election
employees
voting.

Ante p. 41,
s. 50.

Respondent
a contractor
with the
Crown.

R.S.C., c. 6,
s. 70 (d).

Receiving
pecuniary
support from
companies
and others.

7-8 E. 7, c. 26,
s. 36.

24. Your petitioner further says that the respondent by himself, and by his agents, and by divers persons on his behalf by and with his actual knowledge and consent, before and during the said election, for the purpose of affecting the return of the above mentioned and of the candidates at the said election, made and published, and caused to be made and published divers false statements of fact in relation to the personal character and conduct of the said and

25. And your petitioner further says that divers persons who voted for the respondent at the said election, and other persons, directly or indirectly, by themselves or by other persons on their behalf, on account of and as payment for voting or for their having voted or for illegally agreeing or having agreed to vote for the respondent at the said election, or on account of and as payment for their having illegally assisted or agreed illegally to assist the respondent at the said election, applied to and received from the respondent and his agent or agents the gift or loan of money or valuable consideration, or the promise of the gift or loan of money or valuable consideration, or offices, places or employment, or the promise of offices, places or employment

26. Your petitioner further says that the respondent's agents, and divers persons on his behalf, by and with his actual knowledge and consent, and divers persons who voted for the respondent at the said election were, before and during the said election, guilty of receiving, agreeing and contracting for money, gifts, loans, valuable considerations, offices, places and employment for themselves, and for other persons for voting and for agreeing to vote, or for refraining and agreeing to refrain from voting, at the said election.

27. Your petitioner further says that certain persons retained and employed for reward by and on behalf of the respondent, for the purposes of the said election, as agents, clerks and messengers, voted for the respondent at the said election.

28. And your petitioner further says that the said respondent, before and during the said election was, and still is, directly or indirectly, alone and with other persons, by himself, and by the interposition of trustees and third parties, holding and enjoying, undertaking and executing contracts and agreements expressed or implied with and for the Government of Canada on behalf of the Crown, and with and for officers of the Government of Canada, for which public money of Canada was and is to be paid.

29. Your petitioner further says that the respondent, by himself and by his agents, and that divers persons on his behalf, by and with his actual knowledge and consent, knowingly received, directly or indirectly, from divers companies and associations not incorporated for political purposes alone, divers contributions,

loans, advances, payments, and promises and offers to pay money and its equivalent to and for and in aid of the respondent at the said election, and to and for and in aid of the political party to which the respondent belongs, and to and for and in aid of divers committees and associations of such party, and to and for and in aid of divers companies incorporated for political purposes, and to and for and in furtherance of divers political purposes, and for the indemnification and reimbursement of divers persons for moneys so used.

30. And your petitioner further says that all or some of the corrupt practices and unlawful acts hereinbefore alleged to have been committed by the respondent's agents, or persons on his behalf, were so committed with the actual knowledge and consent of the respondent.

31. And your petitioner further says that by reason of the matters aforesaid, the respondent was and is ineligible as a candidate at the said election, and was and is incapable of being elected to and sitting in the House of Commons of Canada, as a member for the said electoral district of , or any other electoral district, and of voting at any election of a member of that House, and of holding any office in the nomination of the Crown or of the Governor-General in Canada, and that the election and return of the respondent as a member of the said House of Commons of Canada for the said electoral district as aforesaid were and are wholly null and void.

Respondent
ineligible.
R.S.C., c. 6,
ss. 70, 71.

32. And your petitioner further says that by reason of the matters aforesaid, certain votes ought, on the trial of this petition, to be struck off from the number of votes appearing to have been given to the respondent.

Illegal votes,
striking out.

Wherefore your petitioner prays:—

Prayer.

1. That it may be determined and adjudged that the said respondent was not duly elected or returned as a member of the House of Commons of Canada for the said electoral district.

2. That it may be determined and adjudged that the said election was and is void, or, in the alternative, that the above named , of , one of the candidates at the said election, ought to have been, and was duly elected and returned at the said election.

Claim of seat.

3. That it may be declared and found that the said respondent was and is guilty of the said several corrupt and illegal acts and practices hereinbefore charged as having been committed before, during, at and after the said election by himself and by his agents and other persons on his behalf, by and with the actual knowledge and consent of the said respondent.

Personal dis-
qualification
of respondent.

4. That in consequence thereof the said respondent may be adjudged disqualified and incapable of being elected to, or sitting in, the House of Commons of Canada, and of voting at any election of a member of that House, and of holding any office in the nomination of the Crown, or of the Governor-General in Canada.

And your petitioner will ever pray.

Dated at this day of December, 190 .
Witness

(Signature,)
Petitioner.

3. INDORSEMENT ON PETITION, AND ALL COPIES. (RULE 6 (4).)

The petitioner, *A. B. (if so acts for himself, and his address for service is the office of [e.g. Messrs. A. & B. No. 5010 Toronto St.], in the City of Toronto, or has appointed John Jones, Esquire, of the of , his solicitor, and the office of the said John Jones or of Messrs. A. & B., the agents of the said John Jones, [No. 5010 Toronto Street, in the City of Toronto], is the address for service of the said petitioner.*

(Signature of Petitioner).

4. AFFIDAVIT OF PETITIONER.

In the High Court of Justice.

The Dominion Controverted Elections Act, and amending Acts.

Petitioner,
and
Respondent.

Election of a Member for the House of Commons of Canada for the Electoral District of , holden on the [19th and 26th days of October,] 190 .

I, , of the of ,
in the Count of , make oath and say.

1. That I am the above named petitioner.

2. That the petition hereto annexed is presented in good faith, and that I have good reason to believe, and verily do believe that the several allegations contained in the said petition are true.

Sworn before me at the
of , in the
County of
this day of
, A.D. 190 .

A Commissioner, etc.

5. RECEIPT OF REGISTRAR FOR DEPOSIT.

In the High Court of Justice.

The Dominion Controverted Elections Act.

Between

Petitioner,

and

Respondent.

Election of a member for the House of Commons for the Electoral District of the Riding of the County of ,
holden on the [19th day of October and 26th day of October,]
A.D. 190 .

Received from the petitioner herein the sum of \$1,000 , as security for the payment of all costs, charges and expenses that may become payable by the petitioner herein pursuant to the provisions of the Dominion *Controverted Elections Act*.

Dated at Osgoode Hall, in the City of Toronto, this day of , A.D. 190 .

6. NOTICE OF PRESENTATION OF PETITION.

In the High Court of Justice.

The Dominion Controverted Elections Act.

Between

Petitioner,

and

Respondent.

Election of a member for the House of Commons for the Electoral District of the Riding of the County of ,
holden on the [19th day of October and 26th day of October,]
A.D. 190 .

Take notice that on this day of , A.D. 190 ,
a petition was presented unto the Court and filed and delivered
in the office of the Registrar of the High Court of Justice for
Ontario, at Osgoode Hall, in the City of Toronto, by ,
a true copy of which said petition is hereto annexed.

And further take notice that at the time of the presentation of
the said petition, security, as required by the *Dominion Contro-
verted Elections Act*, was given on behalf of the petitioner by
depositing the sum of \$1,000 with the registrar, a copy of whose
receipt therefor is hereto annexed.

Dated this day of , A.D. 190 .

Yours, etc.,

(Signature,)

Solicitors for the Petitioner.

To

The above named Respondent.

7. FORM OF ENTITLING AFFIDAVITS AND DOCUMENTS.

*(Form 3 in Rules (Rule 9). (a).)**(Form 3 in Rules (Rule 9). (a).)*

The Dominion Controverted Elections Act.

Between

C.D., Petitioner,

and

A.B., Respondent.

Election of a member for the House of Commons for *(name of Electoral District)*.

(a) This form does not apply to petitions: see Form 1; nor to notices of trial: see Form 20; nor to orders for attendance of witnesses: see Form 22; nor to orders of committal: see Form 23; nor to notices of application to withdraw petition: see Forms 24 and 25.

8. NOTICE OF RESPONDENT'S ADDRESS FOR SERVICE.

Before Petition filed (see Rule 10.)

Dominion Controverted Elections.

Election of a member for the House of Commons for the Electoral District of, holden on the day of .

A.B. of , in the County of , being the person returned as duly elected at the said election do hereby give notice to whom it may concern that in case a petition shall be filed in respect to the said election that I,* have appointed C.D., Esquire, of the of , Solicitor, to act as my agent, and that my address for service is the office of No. [King Street West] in the City of Toronto.

*Or, where the respondent intends to act in person, proceed as above to * and then add intend to act in person, and that my address for service is (giving some address in the City of Toronto.)*

A.B.

Dated this

day of

190 .

Note.—Even though a respondent deliver this notice before petition filed, service of the petition on the agent, if any, is not authorized: see *ante*, p. 23.

9. NOTICE OF APPOINTMENT OF AGENT BY RESPONDENT AFTER PETITION FILED.

(Title as in No. 7).

Take notice that the above named respondent *A.B.* has appointed me to act as his agent herein and my address for service is the office of my Toronto agents, Messrs. *C. D.* and *E.*, No. King Street West, in the City of Toronto.

F.G.,

Of the Town of , in the County of .

10. NOTICE THAT RESPONDENT ACTS IN PERSON AND HIS ADDRESS FOR SERVICE.

(Title as in No. 7.)

Take notice that I, *C.D.*, the above named respondent, act in person and my address for service is (*give specific address in the City of Toronto*).

Dated this

day of

, 19

}

C.D.

11. PRELIMINARY OBJECTIONS.

(Title as in No. 7.)

Preliminary objections of the respondent, *A.B.*, to the petition of the above named *E.F.* *

I, , the above mentioned respondent object, as follows: (*state the several objections intended to be relied on seriatim, e.g.*):

1. That the said petition was not filed or presented within the time prescribed by the *Dominion Controverted Elections Act*.

2. That security for costs was not given by the petitioner, at the time of the presentation of the petition as required by the said Act.

3. That the petitioner is not a person qualified to present the said petition.

Wherefore the petitioner prays the judgment of the Court upon his said objections, and claims that the petition should be dismissed out of this honourable Court, and that the petitioner should be ordered to pay the respondent's costs.

Dated this day of , 19 .

A.B.

Respondent in person.

or C, D, & F.,

Solicitors for the Respondent.

The address of the respondent for service is [the office of Messrs. C., D. & F., No. 5100 Toronto Street.] Toronto.

12. APPOINTMENT FOR HEARING OF PRELIMINARY OBJECTIONS.

(Title as in No. 7.)

Upon the application of the above named respondent, I appoint _____, the _____ day of _____, at the hour of _____, in Court at Osgoode Hall, in the City of Toronto, to hear and dispose of the preliminary objections filed by the respondent against the petition herein and against the further prosecution of said petition, at which time and place let all persons concerned attend, and in default such order may be made by me in their absence as may seem just.

Dated this day of , 19 .

(Signed by the Judge.)

13. ORDER DISALLOWING PRELIMINARY OBJECTIONS.

In the High Court of Justice.

(Date)

Hon. Mr. Justice A.B.

(Title of Cause as in No. 7.)

1. Upon motion made unto this Court this day by counsel for the above named respondent in presence of counsel for the petitioner, pursuant to my appointment made herein on the day of _____, and upon hearing read the preliminary objections and upon hearing [the evidence adduced by the respondent and petitioner respectively, *or as may be,*] and upon hearing counsel aforesaid.

2. This Court doth order that the said preliminary objections be and the same are hereby disallowed.

3. And this Court doth further order that the respondent *A.B.* do pay to the petitioner *C.F.* his costs of and occasioned by the filing of the said preliminary objections and of this motion forthwith after taxation thereof [*or as may be ordered*].

14. ORDER ALLOWING PRELIMINARY OBJECTIONS.

(*Title as in No. 13.*)

Proceed as in Form 13, to the end of par. 1.

2. This Court doth order that the said preliminary objections [*or preliminary objections numbered 3 and 5, or as may be*], be and the same are hereby allowed *if so*, and that the said preliminary objections numbered 1, 2, and 4, *or as may be*), be and the same are hereby dismissed.

3. And this Court doth further order that the petition of the said *E.F.*, presented unto this Court, on the day of , be and the same is hereby dismissed.

4. And this Court doth further order that the petitioner, *E.F.*, do pay to the respondent, *A.B.*, his costs occasioned by the filing of the said petition and of his said preliminary objections [*or, if so*, preliminary objections numbered 3 and 5, less the petitioner's costs of the objections numbered 1 to 2 and 4] forthwith after taxation thereof.

15. ANSWER OF RESPONDENT.

(*Title as in No. 7.*)

The answer of *C.D.*, the above named respondent, to the petition filed herein.

1. The respondent admits the allegations contained in paragraphs numbered and , of the said petition.

2. The respondent denies the allegations contained in all of the other paragraphs of the said petition, and prays that the petition may be dismissed, and that the petitioner be ordered to pay the respondent's costs.

Dated this day of , 19 .
E.F.,
Solicitor for the Respondent.

16. PARTICULARS OF CORRUPT PRACTICES, ETC.

(Title as in No. 7.)

No.	Names and addresses of persons hired, bribed, treated, intimidated, etc.	Names and addresses of persons hiring, bribing, treating, intimidating, etc.	Place where act committed.	Date of commission of act.	Nature of act.
1	John Jones, of Tp. of York, farmer.	William Smith of Tp. of York, grocer.	Markham Village.	3 June, 1909.	Treating

N.B.—It may in some cases be convenient to give separate lists including in each list all the corrupt acts of the same class.

17. ORDER TO PRODUCE.

(Title as in No. 7.)

Upon the application of the

It is ordered that the , do produce within ten days after the service hereof under oath all documents in his custody or power, relating to the matters in question, saving all just exceptions, and do deposit the said documents with the senior registrar of this Court; and that the , his solicitor or agent, be at liberty to inspect the same and take examined copies thereof.

Dated the day of

(Signature of Registrar.)

18. AFFIDAVIT ON PRODUCTION OF BOOKS AND PAPERS PRESCRIBED BY THE "CONTROVERTED ELECTIONS ACT."

In the (name of Court.)

(Title as in No. 7.)

Election for *, holden on the day of A.D.
I, of , make oath and say:—

1. That I have in my possession or power the documents relating to the matters in question set forth in the first and second parts of the first schedule hereto annexed;

6 C.E.

2. I object to produce the said documents set forth in the second part of the said first schedule;

3. *(State upon what grounds objection is made, and verify the facts as far as may be);*

4. I have had, but have not now, in my possession or power the documents relating to the matters in question set forth in the second schedule hereto annexed;

5. The last mentioned documents were last in my possession or power on *(state when)*;

6. *(State what has become of the last mentioned documents, to whom they have been given, and in whose possession they now are);*

7. According to the best of my knowledge, remembrance, information and belief, I have not now, and never had in my own possession, custody or power, or in the possession, custody or power of my agents or attorneys, agent or attorney, or in the possession, custody or power of any other person on my behalf, any deed, account, book of accounts, minutes, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document or other document whatever, relating to the matters in question, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the first and second schedule hereto annexed.

Sworn, etc.

(Annex the schedules mentioning the documents in question).

19. ORDER FOR PRODUCTION BY CLERK OF THE CROWN IN CHANCERY.

(Title as in No. 7.)

1. Upon motion made unto this Court this day by counsel for the above named _____, in presence of counsel for the above named *(or as may be)*, and upon hearing read *(state what)* and upon hearing counsel aforesaid.

2. This Court doth order that the Clerk of the Crown in Chancery do upon service on him of a copy of this order and payment to him of the proper costs and charges of transmitting and retransmitting to him the documents hereinafter mentioned, forthwith transmit to [the senior registrar of this Court in the City of Toronto, *or as may be*], all books, lists, commissions, ballots, cer-

tificates, statements, documents, papers and returns relating to the election in question herein, together with the cost of retransmitting such documents.

3. And this Court doth further order that the petitioner and respondent be respectively at liberty to inspect and take copies of all or any of such documents.

4. And this Court doth further order that such documents be forthwith on the termination of the proceedings herein be transmitted by the said [senior registrar of this Court, *or as may be*], to the said Clerk of the Crown in Chancery.

20. NOTICE OF TRIAL.

(Form 2 in Rules (Rule 18).)

In the High Court of Justice.

The Dominion Controverted Elections Act.

Between

and C.D., Petitioner,

A.B., Respondent.

Election petition of (*name of electoral district*.)

Take notice that the above petition (*or petitions*) will be tried at _____, on the _____ day of _____ 19____, and on such other subsequent days as may be needful.

Dated the _____ day of _____ 19____.

By order,

G.H.,
Registrar.

21. SUBPENA.

(Title as in No. 7.)

Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To

Greeting:

We command you that, all excuses being laid aside, you and every of you be and appear in your proper persons before the

Judges assigned to try the election petition for the Electoral District of _____, which trial is to be holden at the _____, in the _____ of _____, in the County of _____, on _____, the _____ day of _____, 190____, by ten o'clock in the forenoon of the same day, and so on from day to day, until the said election petition shall be tried or otherwise disposed of, to testify all and singular you or either of you know in the matter of the said election petition depending in our High Court of Justice, at Toronto, wherein _____ is petitioner, and _____ is respondent, on the part of the said _____, and at the Court for the trial of the said election petition for the Electoral District _____ at the _____ of _____ aforesaid, to be tried by the said Judges without a jury.

And this you or any of you shall by no means omit, under the penalty of four hundred dollars.

Witness the Honourable _____, President of our High Court of Justice at Toronto, the _____ day of _____, A.D. 190____.

E. HARLEY,
Clerk of Records and Writs.

Issued from the office of the senior registrar of the High Court of Justice at Toronto.

Registrar, H.C.J.

22. ORDER FOR ATTENDANCE OF WITNESS.

(Form 4 in Rules (Rule 23).)

Court for the trial of an election petition for (complete the title of the Court), the _____ day of _____.

To A.B. (describe the person). You are hereby required to attend before the above Court at (place), on the _____ day of _____, 19____, at the hour of _____ (or forthwith as the case may be), to be examined as a witness in the matter of the said petition, and to attend the Court until your examination shall have been completed.

As witness my hand, this _____ day of _____, 19____.
J. K.,
Judge.

23. ORDER FOR COMMITTAL.

(Form 5 in Rules (Rule 24).)

In the High Court of Justice.

At a Court holden on the day of 19 ,
 at , for the trial of an election petition for the (*name*
the electoral district) before the Honourable and
 the Honourable two of the Judges pursuant to
The Dominion Controverted Elections Act.

Whereas *A.B.* has this day (*or as the case may be*) been guilty,
 and is by the said Court adjudged to be guilty of a contempt
 thereof,—the said Court does therefore sentence the said *A.B.* for
 his said contempt to be imprisoned in the common gaol of the
 of , for , and to
 pay to His Majesty (*or as the case may be*), a fine of \$,
 and to be further imprisoned in the said gaol until the said fine
 be paid. And the Court further orders that the sheriff of the said
 County (*or as the case may be*), and all constables and officers of
 the Peace of any County or place where the said *A.B.* may be
 found, shall take the said *A.B.*, into custody, and convey him to
 the said gaol, and there deliver him into custody of the gaoler
 thereof to undergo his said sentence. And the Court further orders
 that the said gaoler do receive the said *A.B.* into his custody, and
 that he shall be detained in the said gaol in pursuance of the said
 sentence.

Signed the day of , 19 .
 O.D.,
 E.F.,
 Trial Judges.

24. NOTICE OF INTENTION TO APPLY TO WITHDRAW PETITION.

(Form 6 in Rules (Rule 28 (1)).)

In the High Court of Justice.

The Dominion Controverted Elections Act.

Between *C.D.*, Petitioner,
 and
 A.B., Respondent.

(Name the Electoral District.)

Petition of (*state petitioner*) presented the day of
 19 .

The petitioner proposes to apply to withdraw his petition upon the following ground (*state the ground*), and prays that a day may be appointed for hearing his application.

Dated this day of , 19 .
C.D.,
Petitioner.

25. NOTICE OF APPLICATION TO WITHDRAW PETITION.

(*Form 7 in Rules (Rule 28 (3)).*)

In the High Court of Justice.

The Dominion Controverted Elections Act.

The election petition for (*name the electoral district*) in which is petitioner, and respondent.

Notice is hereby given that the petitioner has, on the day of , 19 , given notice of an application to withdraw the petition of which notice the following is a copy (*set it out*), and take notice that any person who might have been a petitioner in respect of the election may, within five days after the first publication of this notice, give notice in writing of his intention to apply on the hearing for leave to be substituted as a petitioner.

This notice was published on the day of , 19 .
L. M.,
Sheriff.

26. REGISTRAR'S CERTIFICATE OF RECORD FOR APPEAL.

(*Title as in No. 7.*)

I, , Senior Registrar of the High Court of Justice for Ontario, do hereby certify that the papers hereunto annexed do constitute the record of the proceedings whereon the [order of the Honourable Mr. Justice Britton, of the twenty-second day of December, 1908, was made, disallowing the preliminary objections of the respondent herein, together with the said order, *or as may be*], and the reasons for the decision, and also my receipt for the security for costs of the appeal of the respondent from the said [order.]

In witness whereof I have hereunto set my hand and caused the seal of the said Court to be hereunto affixed, this day of , A.D. 19 .
(L.S.) (*Signature of Registrar.*)

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